

# **Report to the Secretary of State for Transport**

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

**an Inspector appointed by the Secretary of State for Transport**

**Date: 9 July 2019**

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## **TRANSPORT AND WORKS ACT 1992**

### **THE NETWORK RAIL (CAMBRIDGESHIRE LEVEL CROSSING REDUCTION) ORDER [20--]**

Inquiry opened on: 28 November 2017

Ref: DPI/Z1585/17/11

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## **The Network Rail (Cambridgeshire Level Crossing Reduction) Order [20--]**

- The application for this Order is made by Network Rail pursuant to section 6 of the Transport and Works Act 1992 for an Order under sections 1 and 5 of that Act.
- The Order would authorise Network Rail to close or downgrade a number of level crossings of the railway line in the County of Cambridgeshire. The Order would authorise the carrying out of works including the removal of level crossings and the construction of bridges to carry new public rights of way over drains or watercourses; the diversion or redesignation of the status of certain public roads, footpaths, bridleways, restricted byways or byways open to all traffic; the creation of new rights of way; and, permit Network Rail to acquire land and interests in land in connection with the construction of the scheduled works authorised by the Order.
- There were 50 statutory objections, 3 representations and 4 letters of support outstanding at the commencement of the Inquiry.

### **Summary of Recommendation: The Order be made subject to modifications.**

#### **1. REPORT STRUCTURE**

1.1 The Report deals firstly with procedural matters and then the arguments regarding the strategic matters relating to the Order.

1.2 The Secretary of State indicated the matters about which he particularly wished to be informed in the Statement of Matters ("SOM"). The Report sets out the relevant SOM, with comments, as appropriate in each section. The SOM are set out below:

**SOM 1** The aims and the need for the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Scheme ("the scheme").

**SOM 2** The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme.

**SOM 3** The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies.

**SOM 4** In relation to each of the level crossings to be wholly or partially closed and the proposed diversionary routes to be created:

**SOM 4(a)** The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties

**SOM 4(b)** Impacts on other users

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- SOM 4(c)** Impacts on flood risk and drainage
- SOM 4(d)** Any other environmental impacts
- SOM 4(e)** The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed
- SOM 5** The measures proposed by Network Rail to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of utility providers or statutory undertakers.
- SOM 6** Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the DCLG Guidance on the "Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" (published on 29 October 2015):
- SOM 6(a)** whether there is a compelling case in the public interest for conferring on Network Rail powers compulsorily to acquire and use land and rights in land for the purposes of the scheme; and
- SOM 6(b)** whether the land and rights in land for which compulsory acquisition powers are sought are required by Network Rail in order to secure satisfactory implementation of the scheme.
- SOM 7** The conditions proposed to be attached to the deemed planning permission for the scheme, if given, and in particular whether those conditions satisfy the six tests referred to in Planning Practice Guidance, Use of Conditions (Section ID:21a).
- SOM 8** Network Rail's proposals for funding the scheme.
- SOM 9** Whether the statutory procedural requirements have been complied with.
- SOM 10** Any other matters which may be raised at the inquiry.
- 1.3 The twenty-five crossings to be considered are dealt with individually, or in appropriate groups, within sub-sections in section 7 of the Report, as indicated in the table below.
- 1.4 These crossing-specific sub-sections contain brief descriptions of the site and its surroundings, the gist of the evidence presented with conclusions on that evidence and recommendations in relation to that crossing or group of crossings by reference to the appropriate SOMs.

<b>Report Sub-section</b>	<b>Crossing number</b>	<b>Crossing name</b>
7.1	C01	Chittering
	C02	Nairns No. 117
	C33	Jack O'Tell (Adam's Crossing)
	C34	Fysons
7.2	C04	No Name No. 20 (Meldreth)
7.3	C07	Harston, No. 37
7.4	C10	Coffue Drove
7.5	C11	Furlong Drove
7.6	C12	Silt Road
7.7	C14	Eastrea Cross Drove
7.8	C15	Brickyard Drove
7.9	C16	Prickwillow 1
	C17	Prickwillow 2
7.10	C20	Leonards
7.11	C21	Newmarket Bridge
	C22	Wells Engine
7.12	C24	Cross Keys
7.13	C25	Clayway
7.14	C26	Poplar Drove
	C27	Willow Road/Willow Row
7.15	C28	Black Horse Drove
7.16	C29	Cassells
7.17	C30	Westley Road
7.18	C31	Littleport Station
7.19	C35	Ballast Pit

- 1.5 A summary table of the recommendations can be found at paragraph 13.1.
- 1.6 Other general matters relating to the Order are dealt with subsequently with conclusions set out in relation to each section of the Report.
- 1.7 Some of the written submissions were added to at the Inquiry by oral evidence and the Inquiry appearances and documents are listed in the appendices.

## 2. PROCEDURAL MATTERS

- 2.1 I held a pre-Inquiry meeting into the proposed Order on 7 September 2017 at the Hilton Cambridge City Hotel. The Inquiry opened at the Hallmark Hotel, Cambridge on 28 November 2017, adjourning on 20 December. The Inquiry resumed on 22 February 2018 at Shire Hall, Cambridge, closing in that venue on 23 February. The Inquiry sat for a total of 22 days plus one day for the Pre-Inquiry meeting.
- 2.2 I made unaccompanied site visits to all the crossings in the weeks beginning 4 September and 16 October 2017. I walked the existing recorded routes and proposed routes, where they were existing public routes, or I had permission to access the relevant land. Where this was not the case, I viewed the proposed routes from existing highways and vantage points.
- 2.3 Additional unaccompanied site visits were made to some crossings in the week beginning 19 February 2018. This was where matters had been raised during the Inquiry which I felt required me to look more specifically at certain matters, with permission to access the land in question. These were crossings C04, No. 20, Meldreth, C14, Eastrea Cross Drove, C15, Brickyard Drove and C20, Leonards.
- 2.4 On request I made an accompanied site visit to the crossings and land associated with FC Palmer & Sons ("FCPS"), crossings C01, Chittering, C02, Nairns No. 117, C33 Jack O'Tell (Adam's Crossing<sup>1</sup>) and C34, Fysons.
- 2.5 No other accompanied visits were requested, and I was satisfied that none were required.

### **Purpose of the Order**

- 2.6 The Order was intended to close or downgrade a number of level crossings in the County of Cambridgeshire. In relation to these closures or downgrades the Order would authorise the carrying out of works including the removal of the crossings and the diversion or redesignation of the status of certain public roads, footpaths, bridleways, byways open to all traffic, private rights of way and the creation of new public and/or private rights of way.
- 2.7 The Order would also authorise the construction of foot, bridle and vehicular bridges as required to carry new public and private rights of way over drains or watercourses. The Order would 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.

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<sup>1</sup> Also referred to by some as 'Adams Crossing'

## Objections to the Order

- 2.8 After the Order application was submitted, the Department for Transport (DfT) invited objections and representations.
- 2.9 During that objection period, 42 days from the application date, 52 objections<sup>2</sup>, 3 representations and 4 letters of support were received. Two objections (O7 and O28) were withdrawn prior to the opening of the Inquiry. Three Interested Parties were included as representations during the Inquiry process (Rep 4, Rep 5 and Rep 6) and there was an additional letter of support (Supp/5).

## Modifications

- 2.10 This Order was one of three drafted in the same tranche of work relating to railway lines in Anglia route area, affecting Cambridgeshire, Essex<sup>3</sup> and Suffolk. The Order as initially drafted affected 29 public and private level crossings over a number of railway lines in Cambridgeshire. The railway lines affected would be the Cambridge to Ipswich (CCH), Ely to Bury St Edmunds (SOB2), Ely to King's Lynn (BGK), Ely to Norwich (ETN), Ely to Peterborough (EMP), Kings Cross to Cambridge (SBR) and Liverpool Street to Ely (BGK).
- 2.11 The Essex Inquiry opened prior to the Cambridgeshire Inquiry and it was discovered that there had been an error in notification of some with land interests in that case. That Inquiry was adjourned to resume once the matters had been addressed. In checking the information, it was discovered that similar failures to notify had arisen in relation to some of the crossings within the Cambridgeshire Order: C03, West River Bridge; C08, Ely North Junction; C09, Second Drove; and, C13, Middle Drove.
- 2.12 In order to proceed with the scheduled Cambridgeshire Inquiry NR requested that these crossings be removed from the Order, so that appropriate notification could be carried out. I was satisfied that this was reasonable. These crossings were not included in the Filled Order<sup>4</sup> and will not be considered as part of this Report.
- 2.13 There were some objections relating purely to these crossings and, as a result of their removal from the proceedings, I have not considered these objections. In relation to C08 these are O22, O30, O37, O46 and O47. In relation to C13 the relevant objections are O3, O20 and O21. For other objections and representations, matters have been raised in relation to other crossings and dealt with in the relevant sub-sections.
- 2.14 Twenty-five crossings remain to be considered.

## Invited comments

- 2.15 On 24 July 2018 the new National Planning Policy Framework ("NPPF") was published. As the parties had made submissions in relation to the

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<sup>2</sup> References O8, O24 & O27 were not allocated

<sup>3</sup> This order also included crossings in Hertfordshire, Thurrock, the London Borough of Havering and the Borough of Southend-on-Sea. For convenience it is referred to as the 'Essex' order/inquiry.

<sup>4</sup> NR-INQ-38



existing NPPF the opportunity was provided for comments in relation to the updated version.

- 2.16 A further revision was published on 19 February 2019. I considered whether it was necessary to offer a further opportunity for comments in relation to the update but decided that the changes to the relevant sections were not so significant that the responses would be likely to alter. It remains open to the Secretary of State to seek further responses on this matter should he consider it helpful to do so.

### **Use of the Transport and Works Act Order Procedure**

- 2.17 Prior to the start of the Inquiry, the Ramblers Association (O26) ("the Ramblers") made legal submissions regarding the use of a Transport and Works Act Order ("TWA") procedure. Network Rail ("NR") responded to these matters in their statement of case and closing submissions.

### **The Case for the Applicant, Network Rail**

- 2.18 Some initial objections queried the use of a TWA rather than application to the local highway authority under sections 118A or 119A of the Highways Act 1980 (HA80). NR is confident that it would be appropriate to address these level crossing closures under the regime established by the Transport and Works Act 1992 (TWA).
- 2.19 Rail Crossing Diversion or Extinguishment Orders under the HA80 may only be used in the interests of public safety and have a limited remit. By contrast a TWA can take into account not only safety but the wider context in which the railway is managed and operated.
- 2.20 A TWA can authorise ancillary works (such as footbridges and bridleway bridges to carry new public rights of way (PROW) over drains or watercourses), the removal of crossings, the diversion or redesignation of the status of certain highways and the creation of new rights of way in substitution. It allows multiple level crossings to be considered in a holistic way and in a single application.
- 2.21 It can confer the powers over land necessary to implement the requisite works, and for such works to be left in situ or land used only temporarily. This is outside the scope of the 1980 Act. The process also allows NR to repeal local legislation relating to the level crossings, for example, at Littleport Station, C31.
- 2.22 The Order falls squarely within s 1(1) TWA: "*an order relating to, or to matters ancillary to, the construction or operation of... a railway*". Although it is argued that the HA80 process is better, that is irrelevant; if the application is lawfully made under the TWA then the application must be determined on its merits.
- 2.23 It would require 20 separate applications under the HA80. The highway authority would have to decide whether to co-operate in the closures and if they did not then NR's position would be irrelevant. If the proposals went forward, it would require 20 Inspectors to hold 20 inquiries. It should be noted that NR has promoted far larger TWAs than this Order.

- 2.24 The Ramblers say that s 13(2) TWA provides that where the Secretary of State considers "*that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order*". The starting point here is the "*order applied for*" – i.e., that which NR seeks and not that which objectors say it should have. The Order applied for includes:
- i. Compulsory acquisition of land
  - ii. Temporary possession of land
  - iii. Disapplication of legislation
  - iv. A request for deemed planning permission
  - v. Extinguishment of private rights
  - vi. Closure (and associated alterations of rights of way) across multiple crossings.
- 2.25 The objects of the Order are ones which the HA80 does not take into account as the basis for closure under s 118A/119A is for the safety of users of the crossing. That is an important part of the objects of this Order, but not the only part, as operational efficiency and future capacity are all elements of the proposal. This could not be achieved under the HA80.
- 2.26 Section 13(2) is expressed as a discretion ("*may on that ground determine not to make the order*") and the Secretary of State is not required to refuse the Order. There are very good reasons why he should not do so, including:
- i. The Secretary of State has on at least 5 separate occasions<sup>5</sup> made orders to close level crossings under the TWA;
  - ii. The applicant canvassed this issue with the TWAO Unit in advance of the application being made and it was confirmed that it was appropriate to proceed under the TWA.
- 2.27 The Ramblers' disquiet appears to be that this is a "unique" proposal. The closure of level crossings is not unique and although the approach taken by NR in its Anglia Strategy is a "fresh" approach this is no reason to resist it. There is nothing inappropriate about the scale of the process, which is more proportionate than pursuing multiple separate orders, each requiring its own inquiry.
- 2.28 Although suggesting "serious concern" about the approach, there was no evidence that the Ramblers' or anyone else's interests were prejudiced. It was odd for the Ramblers to suggest there has been a problem when they only called evidence on 2 of 20 PROW crossings. It would be no easier for them to deal with 20 separate orders in the same timeframe –

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<sup>5</sup> Swynedyke Level Crossing Order 1995; Ammanford Level Crossings Order 1996; Seaham Level Crossing Order 2013; Northumberland Park and Coppermill Lane Level Crossing Closure Order 2017

in fact it would be harder. These proposals have been before them for two and a half years.

2.29 Objection to the use of the TWA is only relevant where PROW across the railway are affected. In respect of 5<sup>6</sup> crossings, this is not the case.

2.30 It is not the task of this Inquiry to carry out a judicial review of NR's processes or NR's state of mind at any particular time. How the Order proposals were devised by the Promoter is irrelevant; the question is whether they are now justified and whether the Order should be confirmed. The Inquiry should be concerned with the merits of the proposals, not the process.

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<sup>6</sup> This is the case for four crossings: C02, C34 & C35, with C33 a private crossing with a concurrent public footpath; the footpath would be unaffected by the proposals. In relation to C26 I consider that this is not a private crossing for the reasons set out in sub-section 7.14.

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 2.31 For the avoidance of any doubt, Cambridgeshire County Council (CCC) recognises the strategic objectives of NR in undertaking this project and is supportive of the Order where, in CCC's view, suitable and convenient alternative routes have been identified and/or would be provided.
- 2.32 With regard to the Filled Order CCC supports the changes made that have enabled it to withdraw certain of its objections. Being unfamiliar with the TWA process, CCC has tried to ascertain the status of Filled Orders. It is understood that they have no formal status and that there is no guidance on them or their role. Whilst they may be common practice, the lack of transparency makes it very difficult for those unfamiliar with the TWA process. CCC ask that DfT provide amended guidance as to what parties can expect. This will be particularly important if NR undertake further Orders of this nature in other areas.

### Ramblers Association (O26)

- 2.33 The Ramblers is known for its expertise in protecting and maintaining the PROW network. They have objected to the Order on a number of grounds.
- 2.34 The TWA was enacted to enable infrastructure-related projects to be processed by way of a statutory order instead of schemes requiring authorisation by promotion of a Private Bill in Parliament. The TWA was intended to simplify the process, enabling a more localised consideration of infrastructure projects that were not of national significance. It was designed to offer a "one-stop shop" providing for a number of subsidiary powers to be available for inclusion, enabling an applicant to more efficiently carry out works. Such powers include, for example, compulsory purchase powers, powers allowing for the interference of both public and private rights of way and powers to make byelaws.
- 2.35 The TWA states, in the relevant parts:
1. *Orders as to railways tramways etc.*
    - (1) *The Secretary of State may make an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales –*
      - (a) *a railway;...*
  5. *Subject-matter of orders under sections 1 and 3...*
    - (6) *An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied –*
      - (a) *that an alternative right of way has been or will be provided, or*

(b) *that the provision of an alternative right of way is not required.*

2.36 Part II of the TWA created an updated statutory framework for ensuring the "safety of railways", which introduced new provisions to be inserted into the HA80. These provisions allow for orders to be made for the stopping up (s118A) and diversion (s119A) of footpaths, bridleways and restricted byways<sup>7</sup> crossing railways. To confirm these orders, the confirming authority must be:

"satisfied that it is expedient to do so having regard to all the circumstances, and in particular to –

(a) *whether it is reasonably practicable to make the crossing safe for use by the public, and*

(b) *what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained."*

2.37 The HA80 has been referred to as part of a "carefully structured scheme for the creation, extinguishment and diversion of footpaths".<sup>8</sup> There are specific procedures for applications, consultation etc and provisions that, for example, restrict the alterations to a point of termination of a way following a diversion order (s119A(5)), or afford powers to a council to require a railway operator to defray, or contribute towards, expenses associated with the erection or maintenance of barriers and signs (ss118A(5) and 119A(8)(b)). Certain organisations, including the Ramblers, have been specified as bodies that are required to be notified at various stages of the order-making/confirming process.

2.38 Section 48 of the TWA was designed to complement s47 (and ss118A and 119A) and provides:

*"48. Footpaths, bridleways and restricted byways over railways.*

*(1) This section applies where –*

(a) *a public right of way over a footpath, bridleway or restricted byway crosses a railway or tramway otherwise than by a tunnel or bridge,*

(b) *the operator of the railway or tramway has made a closure or diversion application in respect of a crossing, and*

(c) *in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.*

<sup>7</sup> Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, sch.1(1), para 1.

<sup>8</sup> *Hertfordshire County Council v Secretary of State for the Department of Environment, Food and Rural Affairs* [2006] EWCA Civ 1718, per Wall LJ at [65].

(2) *The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates."*

2.39 Part II of TWA was designed for the same purpose which underlies the Scheme that NR is currently pursuing by way of the Order. Parliament was aware at the time of enacting the TWA that (the then named) British Rail intended to update a number of level crossings due to safety concerns. The legislative scheme established by the TWA was intended to accommodate these objectives. The Minister's remarks during the second reading in the House of Commons of s48 TWA sets out:

*"The intention is that the railway or tramway operator will identify potentially dangerous crossings in the first instance, using as criteria the guidance recently issued by the railway inspectorate, on which comments are being sought. It is right that this responsibility should remain with the operator. BR is currently surveying all its footpath crossings, beginning with those on high-speed lines.*

*"Where a crossing is identified as unsafe and, following consultation with the council and other parties, it appears that a stopping-up or a simple diversion to another crossing point is appropriate, the Secretary of State may step in and propose a bridge or tunnel order. Where all the interested parties agree that a bridge or tunnel is necessary, the Secretary of State will be able to give notice of a bridge or tunnel order at the same time as the operator applies for a diversion or extinguishment order. If a works order under part I is required, that could be dealt with concurrently.*

*"An inquiry may be necessary to decide whether it is reasonably practicable to retain a crossing and to make it safe for use by the public. In such cases it would be premature to publish a draft bridge order as that would prejudice the outcome of the operator's application. If the inquiry inspector recommended that a crossing was unsafe and could not be made safe, but should not be closed, a structure would be needed and the Secretary of State would consider making an order. The Department of the Environment and the Department of Transport will make all the administrative arrangements to ensure that each is aware of the diversion and extinguishment applications."<sup>9</sup>*

2.40 NR seeks to close 21 public crossings<sup>10</sup> located throughout the county of Cambridgeshire, using one TWAO, the purpose of which is to close the level crossings. Whilst NR claim that they are seeking to close them to improve operational efficiency, it is clear from the statement of case that the key justification is concern about safety.

<sup>9</sup> *Hansard*, HC, Vol 204, col 485.

<sup>10</sup> C02, C34 and C35 are private crossings with no recorded public rights. C33 is a private crossing with a public footpath; the footpath would be unaffected by the proposals.

- 2.41 There have previously been TWAOs confirmed seeking to close one or two level crossings and/or divert PROW. However, the scale of this Order is unprecedented. The fact that other TWAOs have previously been confirmed (and the time limit for reviewing them has passed) does not act as a bar to establishing the inappropriateness of the use of the TWA for such schemes.
- 2.42 By seeking a TWAO, NR are attempting to bypass the specific statutory scheme designed by the TWA itself to accommodate such closures. Whilst the existence of one power does not, necessarily, prevent the use of another, having particular regard to the statutory intention behind the TWA, it is clear that NR's proposed use of the TWA would frustrate the statutory purpose of ss118A and 119A of the HA80. Although NR asserts that only a TWAO can address issues in addition to safety, such as operational efficiency, ss118A and 119A allow for other issues to be considered under the broader "expediency" test.
- 2.43 Safety concerns are, in reality, the driving concern. If NR were allowed to bypass the ss118A and 119A procedure simply by pointing to the further operational benefits, there is a risk that ss118A and 119A would, in future, become defunct; a railway operator would simply assert that closing a crossing would also assist in improving operational management of the network to proceed under a TWAO. It would not need to consider whether it is reasonably practicable to make the crossing safe for use by the public. This is not how the statutory scheme was designed to operate.
- 2.44 NR have argued that a TWAO allows a more comprehensive approach to closures, allowing multiple closures through one order. Such an efficiency-based argument does not make the process lawful.
- 2.45 NR note that the Order includes a number of matters that fall within the ambit of a TWAO and that it would afford them ancillary powers, such as compulsory purchase powers, to enable the closure of level crossings. The fact that the process would be easier for NR does not make it lawful. The request for a number of ancillary powers in the Order should not detract from the fact that the whole Order is directed towards the closure of level crossings which falls within the ambit of the HA80.
- 2.46 Whilst NR argue that the HA80 only applies to footpaths, bridleways and restricted byways, ss116 and 117 of the HA80 are available for the stopping up or diversion of any highway that is not a trunk road or a special road. Section 117 enables any person, who desires a highway to be stopped up or diverted, to request that the highway authority make an application under s116. Section 116(4) provides that:
- "An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath, bridleway or restricted byway"*
- 2.47 This achieves the downgrade or upgrade of the status of certain highways and authorises certain public and or private rights over a crossing to be

extinguished, where appropriate, in place of outright closure, in the same way as a TWAO.

- 2.48 Section 116 of the HA80 includes safeguards, for example, local authorities and parish councils are afforded a right of veto over any proposed order (s116(3)). Parliament has intended, through Part VIII of the HA80, for safeguards to apply to decisions as to the stopping up or diversion of rights of way, which vary depending on what right is at issue and whether any particular circumstances apply. NR is seeking to frustrate this intricate statutory scheme through use of a TWAO.
- 2.49 NR have outlined the issues they might face if they were to proceed under the HA80 in NR18, Client Requirements Document Anglia (Control Period) CP5 Level Crossing Reduction Strategy, where it is stated:

*"1.1.1 Closure difficulties*

*Public footpaths and bridleways can be closed by rail crossing diversion or extinguishment orders (expedient in the interests of public safety) or normal public path orders (diversion to make more commodious/better serve the landowner/not necessary). However, all of these are subject to challenge which can result in public inquiry, where success is not guaranteed. This is therefore a risky and time-consuming strategy. The legal costs of a basic application are around £3k-4k.*

*All public highways<sup>11</sup> can be closed or downgraded by application to a magistrate's court, on the grounds that they are not needed for public use, or should be diverted. Again, this is risky as there is no guarantee magistrates will agree to make an Order. Cost of an application about £3k.*

*Building bridges often requires Planning Permission, land take and other problems which increase the cost (e.g. crossings, where a landowner held us to ransom).*

*The best way to close public highways is through a Transport and Works Act Order. In that way, all proposed changes and consents can be consulted in advance, bridges provided where appropriate, and we can argue using the greater public benefit of improved rail services.*

*User Worked Crossings (UWC) generally now only exist where there is a need to access land where no other practicable access is available; this is as a result of the good efforts during CP4. Closure of these types of crossings is achieved as a private negotiation between NR & the land owners or authorised users." (Emphasis added.)*

<sup>11</sup> The term 'public highway' is understood to mean a highway maintainable at public expense. A 'highway' refers to a route over which the public have the right to pass and repass, regardless of maintenance responsibility. In some instances, it appears that the term 'public highway' has been used to refer to highways used by the public, rather than by reference to maintenance matters.



- 2.50 It appears that NR has consciously sought to bypass the protections under the HA80, as they cannot “guarantee” success. They are attempting to use a TWAO by simply referencing “the greater public benefit of improved railway services”.
- 2.51 The Order should be refused under section 13(2) of the TWA as the objects of the Order “could be achieved by other means”. Section 13(2) provides:
- “...Where an application has been made to the Secretary of State under section 6 above and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order...”.*
- 2.52 The Minister stated, in response to a question as to what the phrase “other means” referred to:
- “...Concern was expressed about a possible flood of applications dealing with matters for which procedures already exist. In particular, some Members feared that unscrupulous applicants might seek to use the new orders to sidestep the established procedures for extinguishing rights of way, where such a proposal was not related to a works matter that belonged to the new procedure.” (Emphasis added.)*
- 2.53 The same concern is evident in *A Guide to TWA Procedures* at 1.14:
- “...the following matters are unlikely to be approved in TWA orders on policy grounds, unless compelling reasons can be shown:*
- ...Proposals which could more properly be dealt with under other existing statutory procedures – for example the closure of...a public right of way where no associated new works requiring a TWA order are proposed.”*
- 2.54 Section 13(2) was intended to prevent the TWA process being used to close PROW where there is no related works matter. It should not enable applicants to circumvent established procedures where the extinguishment and/or diversion of rights of way does not relate to a works matter. NR is not proposing any distinct “works matter” but attempting to promote the extinguishment and/or diversions, in themselves, as the “works matter”. The TWA is not designed to accommodate this type of application.
- 2.55 The catch-all provision of section 5(6) TWA may anticipate the need to close PROWs as a measure ancillary to a TWA project. This does not justify the promotion of a TWA solely concerned with closure of level crossings.
- 2.56 The Ramblers seek to make clear an important distinction as to the tests that need to be applied to this Order. The Order is promoted under sections 1 and 5 of the TWA. In determining whether or not a TWAO should be made under section 1 of the TWA, a wide discretion is afforded

to the Secretary of State. However, the exercise of that discretion is entirely distinct from the test in section 5(6) of the TWA, which states:

- (6) *An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—*
  - (a) *that an alternative right of way has been or would be provided, or*
  - (b) *that the provision of an alternative right of way is not required.*

2.57 The Guide to TWA Procedures states, in Annex II on p. 105:

*"[i]f an alternative is to be provided, the Secretary of State would wish to be satisfied that it would be a convenient and suitable replacement for existing users."*

2.58 However, section 5(6) merely sets out a condition precedent that must be satisfied in the event that any public right of way is to be extinguished by a TWAO. This assumes that the TWAO, itself, has been justified under section 1. Section 5(6) provides a test for when a PROW can be extinguished. It does not set out a test for when a PROW should be extinguished.

2.59 The complicating factor in this Order arises from the fact that NR's strategic methodology for picking which crossings to close by way of diversion, depends on there being a "suitable and convenient" alternative. NR's underlying rationale for the Order – which considers whether or not level crossings "should" be closed – has used the same wording and concepts as the section 5(6) test – which is designed to deal with the question of whether or not PROW "can" be closed.

2.60 The distinction between the section 1 test and the section 5(6) test is crucial to a proper assessment of NR's proposed Order. There should be no assumption that a proposed level crossing closure has been justified simply on the basis that the test in section 5(6) of the TWA has been met. That is a proposition which NR, if it seeks to make it, would need to demonstrate is justified.

2.61 It is inappropriate to use s1 of the TWA to carry out this Scheme. However, if the TWA is to be used then, as an alternative argument, the same considerations as would apply to orders made under ss118A and 119A, should likewise apply to the assessment of individual crossing closures in the Order. NR's acceptance that the reference to an "alternative right of way" in s5(6) TWA means "a convenient and suitable replacement for existing users", as stated in Annex 2 of the Guide to TWA Procedures, is welcomed.

2.62 If a crossing is to be closed under the Order which would result in the stopping-up or diversion of a public right of way, it must be "expedient to do so having regard to all the circumstances" and, in particular, having regard to "whether it is reasonably practicable to make the crossing safe

*for use by the public”, as well as “what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.” If these considerations were applied to the assessment this would help alleviate some of the concerns relating to the inappropriate use of the TWA.*

- 2.63 The relevant considerations under the tests in ss118A and 119A of the HA80 have been elaborated in the Department for Environment, Food and Rural Affairs (Defra) Rights of Way Circular (1/09) (October 2009). The circular states, at 5.49, in relation to s118A:

*“Before confirming the order, the Secretary of State...must be satisfied...that it is expedient to do so having regard to all the circumstances. This provision enables all the relevant factors to be taken in to consideration, which may include the use currently made of the existing path, the risk to the public of continuing such use, the effect that the loss of the path would have on users of the public rights of way network as a whole, the opportunity for taking alternative measures to deal with the problem, such as a diversion order or a bridge or tunnel and the relative cost of such alternative measures”.*

- 2.64 And in relation to s119A:

*“Section 119A(1) provides for the diversion of a footpath, bridleway or restricted byway that crosses a railway otherwise than by a tunnel or bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it. While other criteria are not specified in section 119A, the new way should be reasonably convenient to the public and authorities should have regard to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway.”*

- 2.65 Stephen Sauvain QC, in Highways Law (5th ed) has provided guidance as to the appropriate considerations under s.118A and 119A, setting out that:

*“[In relation to] s.118A...The factors which might influence the question of expediency are not defined in the section and will involve the usual questions relating to the public interest which have to be considered when changes are made to the existing highway network. The factors which could be taken into account might include the use currently made of the existing path, the risk to the public of continuing such use, the effect that the loss of the path would have on users of the public rights of way network as a whole, the opportunity of taking alternative measures to deal with the problem such as a diversion order, bridge or tunnel and the relative costs of the various alternatives.*

*"[For] s119A... it is likely that the range of circumstances which will have to be considered would include a consideration of the length and convenience of the diversion, the effect of the diversion on the land on which the new path is created as well as the public interest in keeping the existing path open over its present route."*

- 2.66 The proposed use of the TWA procedure must not undermine a proper consideration of each crossing closure. It is imperative that the Inquiry procedure is fair, having particular regard to the number of proposed closures to be included. Sections 118A and 119A of the HA80 were designed to ensure a proper consideration of each crossing closure and include protections to best guarantee that interested parties would be duly notified of proposals and afforded an appropriate opportunity to make representations and be heard. Crossings should not be grouped together in such a way that risks losing sight of the wood for the trees.
- 2.67 The TWA imposes no deadline by which a TWAO must be made, with the Highways Encyclopedia stating:
- "The Government resisted attempts to impose a statutory time limit on taking decisions...Decisions should take as long as they have to in order to give all factors full and proper considerations (Official Report, Standing Committee A, col. 205, January 14, 1992)."*
- 2.68 NR stated that the Order includes a number of factors that "could not be achieved under the HA80 processes". The fact that the powers NR is seeking to obtain would only be available under the TWA does not mean that use of that procedure is lawful. The question is not what would NR like to do, but what they can do.
- 2.69 There is a distinction in the tests to be applied to this Order. The Order is promoted under sections 1 and 5 of the TWA and in determining whether or not a TWAO should be made under section 1 of the TWA, a wide discretion is afforded to the Secretary of State. The question is whether or not the case for the Order has been justified and whether or not the Secretary of State considers that the Order should be made.
- 2.70 The exercise of that discretion is distinct from the test in section 5(6) of the TWA, which merely sets out a condition precedent that must be satisfied in the event that any public right of way is to be extinguished by a TWAO. This assumes that the TWAO, itself, has been justified under section 1. Section 5(6) provides a test for when a public right of way can be extinguished, not for when it should be.
- 2.71 This Order must be assessed in its unique context. NR is pursuing the Order as part of its overarching Anglia CP5 Level Crossing Reduction Strategy. This covers the whole Anglia network and the Order is being pursued simultaneously with two other TWAOs: The Network Rail (Essex and Others Level Crossing Reduction) Order (the "Essex Order"), which seeks to close or downgrade 59 level crossings across the whole county of Essex, as well as throughout areas of Hertfordshire, Havering, Thurrock and Southend-on-Sea; and The Network Rail (Suffolk Level Crossing Reduction) Order (the "Suffolk Order"), which proposes to close

- or downgrade 23 level crossings on the mainline branches across the county of Suffolk.
- 2.72 Through these three Orders, NR seeks to close over 100 level crossings across entire counties. It is crucial that the Order is not assessed in isolation as it forms part of a much bigger picture. The scale of the Order, in terms of how many level crossings would be closed at once, is unprecedented. The novelty of the Order was accepted by NR and it is of serious concern to the Ramblers.
- 2.73 When PROW are diverted or extinguished under the HA80, whether under the provisions related to level crossing closure, ss118A and 119A, or the more generic provisions of s116, 118 or 119, one proposal will usually have its own public path order, consultation process and assessment by local people and the highway authority. This is in stark contrast to NR's use of the TWA procedure where so many, entirely unrelated, PROW will be affected.
- 2.74 The serious issues associated with the scale became evident through the Inquiry process with NR having to withdraw four of the original 29 proposals due to a widespread failure to serve the requisite statutory notices on a significant number of land interests. This was also the reason why the public inquiry for the Essex Order unexpectedly adjourned on day three (20 October 2017). The large-scale failure to notify interests in land arose due to the inappropriate size of the scheme.
- 2.75 The scale also has serious repercussions on a national organisation like the Ramblers who rely on volunteers and have limited resources. Whilst the Ramblers may be able to properly assess one or two proposed changes to the rights of way network, expecting it to scrutinise over 100 proposals over the same period of time is simply unreasonable.
- 2.76 In opening the Ramblers highlighted the potential for this to be a "test case" for NR, with the possibility that, if approved, NR would roll out similar projects across the entire country. NR did not dispute this and said that the process was of interest as a whole.
- 2.77 The potential to set a precedent is important because the case is not based only on a proposal to close or downgrade 25 level crossings; it also relies on a "strategic case" that sets out NR's justification for the closures. This "strategic case" includes a standardised methodology for how to pick the crossings that will be closed without the provision of replacement crossing infrastructure, such as bridges or underpasses.
- 2.78 As evident from the Essex Order, which proposes to close nearly 60 crossings, were this strategic case to be approved and applied in other areas of the country, there would seem to be nothing to stop it from being implemented on a much greater scale, in terms of the numbers of crossings per Order, than has been applied in Cambridgeshire.
- 2.79 It is possible for the Secretary of State to form the view that some, or all, of the crossings contained in this Order should be closed, having regard to their individual merits, but that the underlying method by which NR chose them was fundamentally flawed. The Ramblers submit that the

Secretary of State cannot be satisfied that NR's strategic case provides a sufficiently robust methodology for how level crossing closures should be determined. In the event that the Inspector forms the view that some of the level crossings included in the Order should be closed, the Ramblers invite her to nonetheless find that the underlying methodology is flawed.

## Inspector's Conclusions on Preliminary Matters

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 2.80 Although there were originally more concerns regarding the process, at the close of the Inquiry this matter remained a concern to the Ramblers [2.33], but CCC did not pursue the point [2.31].
- 2.81 I consider that the Ramblers are correct in their assessment that the TWA provides separate processes, with Part I relating to Orders Authorising Works etc and Part II to the Safety of Railways etc. Part II introduced statutory changes to the HA80 in order to deal with safety concerns [2.36 – 2.39].
- 2.82 Whilst NR have pointed out during the Inquiry that their consultation documents<sup>12</sup> referred to wider matters it was clear from responses from a number of objectors that they understood that the primary driver for the Order related to safety [for example, 7.2.52, 7.2.84 – 7.2.104, 7.2.111 and 7.3.26]. The Ramblers remain of the view that this is the driving concern [2.43, 2.49 and 2.50] and the NR Statement of Case begins with the issue of 'Level Crossings and Safety' before referring to 'Operations Issues' [2.40].
- 2.83 The Ramblers indicate that the HA80 would allow the same matters to be considered and achieved as proposed by this Order [2.46 – 2.48]. However, I agree with NR that this would not apply in relation to the private crossings referred to in the proposed Order [2.29]<sup>13</sup>.
- 2.84 I agree with the Ramblers that the scale of this application is unprecedented and, in conjunction with the other two proposed Orders, problems have arisen both for the applicant and those objectors dealing with matters across the entirety of a single Order, for example as a highway authority, or all three Orders [2.41, 2.76 and 2.77 – 2.79].
- 2.85 NR indicated at the Inquiry that the process was of interest in other areas<sup>14</sup> and from the strategic case matters it appears that further related orders are likely to be proposed in the Anglia area [3.21 – 3.24]. However, whether it would be easier for any party to deal with such cases in one way or another [2.19, 2.21, 2.23 – 2.25, 2.44, 2.45 and 2.78] is not a matter I consider relevant to the Secretary of State.
- 2.86 The Ramblers accept that the existence of a power does not prevent the use of another [2.42] although referring to frustration of the statutory process. It does not seem that a TWAO was intended for use where other procedures were already available [2.52].
- 2.87 I consider that the Secretary of State can be satisfied that the proposed Order relates to matters ancillary to the operation of a railway insofar as

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<sup>12</sup> NR05

<sup>13</sup> C02, C33, C34 and C35

<sup>14</sup> NR operates in discrete geographical business areas. This Order, and the other two proposed in Essex and Sussex, fall within the Anglia Route area.

- NR claim in their strategic case that there will be operational efficiencies and cost savings as a result of the proposed changes (see section 3) [2.22].
- 2.88 However, I agree with the Ramblers that there is no distinct works matter requiring the diversion or extinguishment of the affected rights of way in this case. Section 5(6) of the TWA arises in relation to ancillary works [2.55] and, in this case, the ancillary works, such as foot and bridle bridges, arise simply because changes to the public and/or private rights of way are being proposed [2.20 and 2.54].
- 2.89 Nonetheless, the Ramblers, and other parties to the Order, worked on the basis that if the Secretary of State decides that the TWA procedure is appropriate then the potentially affected crossings should be considered individually [2.61 – 2.66]. Although there were some initial concerns about the grouping of crossings [2.66] I consider that the Secretary of State can be satisfied that this was done only on the basis of which crossings ought to be considered together, due to matters such as proximity, landownership or relevance of proposals. The Report is set out with the crossings in groups, or singly, in the same way that they were considered in the Inquiry itself.
- 2.90 Notwithstanding the previous use of TWA, although in notably more limited circumstances than now proposed, and the apparent agreement of the Order Unit that it was appropriate to proceed under the TWA [2.26], section 13(2) of the TWA sets out that the Secretary of State may determine not to make an Order [2.51]. It is noted that the Guide to TWA Procedures (“the Guide”) indicates that such proposals would be unlikely to be approved [2.53]. Should the Secretary of State decide to make this Order then amendments to the Guide may be required, not only in this respect [2.32].
- 2.91 I agree with NR that it is not the role of the Inquiry to carry out a judicial review of the process [2.30]. The matters raised at the outset were noted and the Inquiry continued without prejudice to the decision which might later be made on the matter.



### 3. STRATEGIC MATTERS

#### The Case for the Applicant, Network Rail

- 3.1 NR seeks powers to close or downgrade rights over 25 level crossings in the County of Cambridgeshire, together with associated powers (including the acquisition of land and deemed planning permission) to allow works to be carried out to provide diversionary routes.
- 3.2 All level crossings carry risk and they are the largest single contributor to train accident risk on the railway network. They present a risk to those walking, riding or driving over the crossing; and to those driving and riding on trains. A number of high-profile incidents on level crossings have drawn national attention to the risks that they present. The risks exist at each crossing; they can be particularly acute at passive crossings; they can differentially affect those who are old, hard of hearing etc.; and, they are increased by the distractions of modern life.
- 3.3 When the risks materialise, they have appalling consequences. The Inquiry heard from one person directly affected by a level crossing incident and it was obvious that the experience was traumatic, even though she was in the (relative) safety of the train and experienced no physical injuries. Other evidence, such as the Transport Select Committee Report, illustrates the impacts of level crossing accidents on victims, families and witnesses. Although careful to avoid too emotive an argument, NR – and the Secretary of State – cannot disregard the human reality of this risk.
- 3.4 NR must manage the risk at any particular crossing. They can only be avoided through closure. Duties are imposed on NR through its regulatory framework and the general law. NR say there is no distinction between reducing risk so far as practicable and reducing risk so far as possible. Avoidance is the first step in risk management and if level crossing risk can be avoided altogether by closure – because that closure can be lawfully achieved – then it should be pursued. Whether that is “practicable” or “possible” is the question for the Inquiry to examine. There is an overarching duty on NR to operate a safe railway. Where it can be made safer – such as through the removal of the single largest contributor to accident risk on the network – NR should strive for that.
- 3.5 In relation to distinctions between “danger” and “risk” and what that said about “safety”, the position is clear: if a level crossing is open, NR consider it compliant with their risk management processes and the risks are being managed appropriately. That does not mean that the crossing does not carry risk – it obviously does. The risk is quantified by NR using the All Level Crossing Risk Model (ALCRM) and assessed by other means (e.g. narrative risk assessments).
- 3.6 “Dangers” exist at all level crossings and materialise even at crossings which NR has identified as being of lower risk. The fundamental danger is the moving train, which can be encountered at any open crossing. NR do not describe open, i.e., risks managed, crossings as “dangerous” but nor do they need to make a case for closure.

- 3.7 Safety is the absence of risk or danger. It is accepted by all parties that risk can only be removed by closure – and using the word in that way, there is no such thing as a “safe” level crossing. Safety is also concerned with the reduction of risk, i.e., it need not be an absolute outcome. “Safe” may mean “risks managed” rather than “risks removed”. Even if a party to the Inquiry wishes to describe a crossing as “safe”, it still carries risk.
- 3.8 Rather than focus on semantics, it is useful to consider the evidence before the Inquiry on this point. There is little challenge to the safety case for closure. There is no challenge to NR’s evidence that the Order would achieve a reduction in statistical risk at every crossing in the Order, and cumulatively that that risk reduction is material.
- 3.9 Some witnesses appeared to take a view that individuals should take responsibility for their own safety at crossings, but that is not the prevailing view in 21st century Britain. It is not the position of those authorities responsible for considering these issues, and in particular the Office of Rail and Road (ORR). There was also a suggestion that level crossing risk was low, particularly at the lightly used crossings, and that risk on roads was far greater. This misses the point of the Order. NR is responsible for the rail network and cannot excuse its responsibilities by noting that more people die on the roads or on level crossings elsewhere in the world.
- 3.10 The risk carried by level crossings means that resources are called for to assess, maintain, and upgrade, each of the crossings on the network. There are many thousands, with 771 on the Anglia Route alone. That imposes an operational cost to NR which is ultimately borne by railway users and taxpayers. Reducing the number of crossings reduces the number of locations for resources to be deployed. Risk can be concentrated into fewer locations, which can then be more closely managed. The Palmer’s crossings<sup>15</sup> provide an example of this: NR proposes to close two of the three private vehicular crossings and provide a technological enhancement at the remaining one. NR seeks to rationalise its level crossing estate in parallel with providing safety enhancements, as that allows limited public funds to be spent more efficiently and effectively.
- 3.11 In light of NR’s objective to remove passive level crossings from the network by 2040, the costs of renewals of level crossing infrastructure should be assessed as the costs of upgrades. These costs are significant where the required upgrade is from a passive crossing to one which incorporates technology – as a minimum, miniature stop lights (MSLs). There was evidence of the maintenance costs at level crossings and the costs of upgrading the crossings in the proposed Order.
- 3.12 The maintenance liability would shift from NR to CCC, but highway maintenance costs and level crossing maintenance costs are not the same. In reality there is no shift of the burden, since NR have agreed commuted sum payments to CCC, and CCC no longer pursue any argument on this point. Even taking account of the commuted sums, the

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<sup>15</sup> See section 7.1

costs of implementing the Order are less than the cost savings derived from it. There is no justification for a costs/benefit analysis to be derived for each crossing when the overall scheme stacks up financially.

- 3.13 The Order proposals stack up economically solely on the basis of the avoidance of operational costs, which has been described as a “cost-saving exercise”. These are costs which are borne by those who use the railway or by the tax payer, as NR does not pay dividends. Costs savings either allow more spend elsewhere on the railway, or reduce the costs borne by users and the taxpayer. A railway with lower operating costs is a more sustainable one.
- 3.14 The safety benefits derived from the proposals justify the investment. The Order scheme would benefit from a coincidence of improving level crossing safety and reducing the expenditure of public money.
- 3.15 Level crossings are a constraint on the operation of the network. They are an integral part of the railway system and the manner in which the railway is operated must account for the presence of level crossings and therefore pedestrians, horse riders, motorcycles, farm vehicles etc. on the railway track. Level crossings can affect the speed at which trains can operate; interfere with upgrade works such as laying additional track; and, affect signalling operations.
- 3.16 Many of the crossings in this Order lie in areas which are the subject of proposed enhancements. The details of the enhancement schemes are evolving, but by removing the constraint imposed by level crossings, their deliverability would be improved. These schemes are needed as Cambridgeshire fulfils its economic potential and are supported by CCC, which views the railway as a sustainable means of transport for passengers and freight in and across the county.
- 3.17 NR does not say that the closures are justified because suitable and convenient alternative routes are available or provided, although they are. The closure of crossings would be justified for the reasons set out above. The effects of closure should be mitigated where necessary and possible and that is where the question of alternatives arise. NR does not shy away from the proposition that it would, if possible, remove level crossings from the railway entirely.

### **National strategy**

- 3.18 NR has adopted a strategy for level crossings which includes reducing the number of crossings. It proposes, in this Order, to do so through co-ordinated multiple closures and diversions, which is distinct from the process of individual closures for safety reasons and from ongoing work to improve the safety of retained crossings. This would occur through routine management of risk and the wider objectives of phasing out passive crossings by 2040.
- 3.19 NR is wholly owned by the Government and owns and operates the railway network under a licence from the Government. NR is responsible for the maintenance, repair, renewal and safe operation of the railway, with a duty to enhance and improve the operational railway network.

- 3.20 ORR has required NR to seek significant reductions in level crossing risk. It has expressly endorsed level crossing closure as part of NR's output in the current "control period" ("CP5") and 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 do that which it has been told to do by its regulator.

### **Anglia strategy**

- 3.21 The Anglia Strategy sets out a phased approach to removing level crossings from the Anglia Route. It includes a phased approach to level crossing closure. Phases 1 (mainline) and 2 (branch line) seek closure of crossings that are clearly unused or have extremely little use; and "those that have a nearby alternative route utilising existing bridges as a means of crossing the railway". The means to get to the alternative crossing point would be provided by NR wherever possible. Phase 4 included the down-grading of roads and "[user worked crossings] where an alternative means of access has been identified and needs powers to enforce the provision of access". Phases 3 (non-vehicular) and 5 (road crossings) concern new bridges. The Strategy recognises that there are many level crossings "where it is not feasible to extinguish or divert the right of way" and where technology would be required.
- 3.22 The Strategy addresses the "Scheme Definition", explaining an assessment approach which has the users of the route at its heart and including "diversity impact assessment" ("DIA").
- 3.23 Appendix B to the Strategy sought to provide an overview of where crossings might fit in the phased approach. That was an early attempt at capturing what might fall into each phase, not a conclusion that a crossing would fall into a particular phase, or that it should be closed. Appendix D identified certain crossings which would not be suitable for closure in a reasonable timeframe.
- 3.24 Whilst this is not an Inquiry into the Strategy, it is helpful to set the Order scheme in its context. This is not NR's final position in respect of Cambridgeshire level crossings: more will be done, but the Order proposals encompass those phases requiring the least new infrastructure. The availability of an alternative route is at the heart of the strategy and the PROW crossing closures in this Order are ones where NR considers an alternative is available.

### **The Order scheme**

- 3.25 The Order scheme originates from the Route Requirements Document ("the RRD") which was developed to give effect to Phases 1 and 2 of the Strategy. The RRD was written in tandem with the Strategy and was a desk-based exercise, preceding the engagement with CCC and others, and appointment of consultants Mott MacDonald (MM) to take forward the assessment of the proposals.
- 3.26 At various stages proposed closures dropped out of the Order scheme following more detailed assessment, and public consultation. The Inquiry

was not a judicial review of the process of the development of the Order scheme but what is clear from this process is that the Order scheme was supported in national policy; articulated as part of an Anglia-wide phased approach; and developed carefully over several years before submission.

### **Comment on objectors' position**

- 3.27 The process has frustrated CCC and put pressure on individual officers. It is unnecessary to examine whether those frustrations were justified. There was a "steep learning curve" and time was not wasted in the Inquiry through which all matters have been "fully and appropriately addressed".
- 3.28 The CCC position is different from how it was when the Inquiry opened. Ten of the 25 crossings are still the subject of objections, but what appeared at times to be opposition in principle has fallen away. CCC supports the Order where, in their view, suitable and convenient alternative routes have been identified and/or would be provided.
- 3.29 This position of support is inevitable when one considers the purposes of the Order and the wider strategic case. CCC's policy head recognised that the Strategy described above was broadly in line with CCC's Local Transport Plan and Long Term Transport Strategy.
- 3.30 At times CCC's witnesses regarded the strategic alignment of NR's project with their employer's corporate priorities as a matter of irrelevance to their focus on the rights of way network. The local rights of way network should not be considered in isolation. Disrupting the existing rights of way network and re-writing the Definitive Map and Statement ("DMS") is an inevitable consequence of the Strategy and the Order scheme. Because the Strategy aligns with CCC's own policies, it must necessarily accept the change that the Order scheme brings.
- 3.31 The Ramblers seemed to seek to place obstacles in the way of the Order generally, but in reality, their case should be treated as far more limited. Their sole "strategic" witness, Mr de Moor, is a walking champion – dedicated to promoting the enjoyment of walking – but does not do so with any sense of zealotry about the preservation of the existing footpath network at all costs. He argued for the promotion of walking for health and wellbeing reasons and feared that significant erosion of the rights of way network might undermine the attainment of those benefits.
- 3.32 He accepted that level crossing closure, with suitable alternative routes, could be in the interests of walkers and walking. He saw that through closing crossings where suitable diversions are attainable, investment can be focused on those which remain. He agreed that the Ramblers should support the making of the Order, save where NR's proposals failed to provide suitable and convenient alternative routes for walkers.
- 3.33 When the Ramblers scrutinised NR's proposals, their objections were relatively limited in extent. They opposed only 5 of the 25 crossings and only called evidence on two of them. There was a clear disjunct between their "in principle" objections and the actual position "on the ground".

- 3.34 The Secretary of State might consider that where a national campaign group does not in substance oppose the aims of an Order, and calls evidence to oppose only limited parts, limited weight should be given to more generalised but academic complaints about process. The Secretary of State should give less weight to points made for the first time at the Inquiry and not previously in consultation responses, objections, Statements of Case, or proofs of evidence, which pertains to a lot of the points pursued in submissions.

### **Evidence**

- 3.35 The Ramblers suggested that NR failed to put sufficient evidence before the Inquiry. NR produced a statement of case and made various points in support of the Order, including for instance the case that cost savings would be derived from it. It prepared evidence on the basis of that statement of case in compliance with the relevant rules and Guidance. All of the underlying documents to support, for instance, costings are not before the Inquiry. When challenge was made to NR's evidence, it was answered.
- 3.36 The Ramblers did not challenge, for example that the costings were not justified, in their Statement of Case or evidence. The points were raised for the first time in cross examination. NR has strived to assist by providing information when requested, but it is unacceptable for a represented party to treat cross examination as a fishing exercise, as opposed to putting its own case.

### **The general approach to public rights of way (law and policy)**

- 3.37 Section s 5(6) TWA provides that that an Order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or would be provided, or that one is not required, perhaps because the existing network is sufficient.
- 3.38 The Secretary of State guidance on this issue in Annex 2 to the DfT Guide explains that if an alternative is to be provided, the Secretary of State would wish to be satisfied that it would be a convenient and suitable replacement for existing users. These words in the context of guidance should not be construed as if they were a statute. The phrase should be given its ordinary, common sense, meaning, appropriate to the context of the policy as a whole and the wider statutory framework.
- 3.39 The Secretary of State's interpretation focuses on existing users of the public right of way. It is therefore clear that any assessment must relate to existing users and not those who might wish to use it or insist on their legal rights to do so. The language indicates that the Secretary of State is not seeking enhancements to the PROW network and so NR does not accept the submissions made at Part 5 of CCC's Closing. The word "existing" does not extend to those who might be entitled to use a route, but never would. It is accepted that a degree of common sense is required in identifying existing users. If there was some unrelated short-term obstruction of a route, there may be users who are temporarily impeded and protesting that they have been obstructed, who should be treated as being within the class of existing users. That point must have

limits though: if the constraint on a theoretical class of users has been present for many years without complaint, it would be difficult to regard them as "existing" users.

- 3.40 It is possible within this guidance to find that one class of existing users should be accommodated, but another should not. The focus on suitability and convenience must relate to the user in question. Questions of directness, for instance, would be more important to those who use routes for utility purposes than those who use them for recreation. It may be concluded that some classes of users require the provision of a direct off-road alternative, but such provision is not required for others.
- 3.41 The guidance does not invite a comparative exercise between the extinguished right and the alternative (if required). The policy test is materially different from that in, s 119 of the HA80 ("would not be substantially less convenient"), or s 116 ("nearer or more commodious"). The guidance does not suggest any overarching requirement to take account of "public enjoyment of the footpath as a whole", which again distinguishes it from the test in s 119 of the HA80.
- 3.42 The test is closer to (although not the same as) that in section 14(6) of the HA80 where "another reasonably convenient route" is required where side roads may be stopped up for trunk road development; or s 18(6) where such a route is required where side roads may be stopped up for a "special road" (motorway); or where footpaths etc. are stopped up for the purposes of crime prevention under s 118B of the HA80; or where footpaths are temporarily diverted for dangerous works under s 135A. These provide better analogies because the Act there recognises that the wider public interest (in the construction of a trunk road or motorway, or in the prevention of crime) may mean that the existing users of the affected route may be inconvenienced to some degree when compared to the prior situation.
- 3.43 National and local policy supports the provision of a good PROW network. For the reasons set out in the Cycling and Walking Investment Strategy, for instance, walking and cycling should be encouraged. There are significant health and social benefits arising from walking, which are not in dispute and fully accepted by NR.
- 3.44 However, the policy also focuses on the safety of these routes. Risks at level crossings render walking routes less safe and may deter some users from the route. Non-motorised journeys are part of a wider system of sustainable travel which includes rail travel. One has to seek to balance these modes of transport and it would be wrong to attempt to set walking, cycling and riding against train travel, as if they were in competition or conflict. The issue is about striking the right balance.
- 3.45 In light of the safety benefits and rail efficiency benefits of the proposed Order, the question is whether in any instance there is a "significant adverse effect on the rights of way network". This approach sits with the broader policy context and reflects the NPPF's injunction to

permit sustainable development unless the adverse effects of doing so significantly and demonstrably outweighs the benefits<sup>16</sup>.

### **Road safety**

- 3.46 A general argument was made that risk was being transferred from the railway to the road but that is not accepted by NR, nor borne out by the evidence. The Inquiry has heard from two witnesses with considerable road safety expertise: Ms Tilbrook (MM) and Mr Peter Taylor (for CCC) and their positions were relatively closely aligned. It was agreed that the Road Safety Audit (RSA) is an iterative process and road safety issues would inform the detailed design of the proposals, with CCC overview. It was also agreed that the RSA process had complied with the requirements in HD 19/15. It was agreed that it was not possible to make a meaningful comparison between road and rail safety, and so the distinct assessments of safety should be considered separately. Most of Mr Taylor's road safety concerns were based on misunderstandings of the proposals.
- 3.47 The Inquiry was also presented with evidence from a highways engineer acting on behalf of the Ramblers, who made various criticisms of NR's road safety audit process in the Essex TWAO Inquiry. These were addressed in full and since that person did not attend to be cross examined, little weight should be given to his evidence. The suggestion that Ms Tilbrook unfairly influenced the RSA process was shown to be completely wrong. The contention that "the Order cannot be made on the basis of the Stage 1 RSAs alone" ignores HD 19/15, which endorses Stage 1 audits for the purposes of deciding on the principle of a scheme.

### **Witnesses in relation to individual crossings**

- 3.48 It is not accepted that CCC's witnesses are better placed to make assessments on rights of way than Ms Tilbrook, who is an experienced highways engineer with extensive experience of dealing with PROW. She has made the more thorough assessment, informed by a wider team of specialists at MM. Her evidence was detailed and careful in writing, and orally was fair and balanced, not seeking to diminish or avoid the concerns of objectors. NR submits that Ms Tilbrook is suitably qualified to give her evidence and it should be assessed on its merits.

### **The Order, planning conditions, side agreement, and other consequential matters**

- 3.49 Substantial agreement has been reached on these matters. The Order itself is now essentially agreed between NR and CCC, and with other objectors whose objections have focused on its provisions (e.g. South Yorkshire Pensions Authority ("the SYPA"),). NR has proposed changes to the Order and the Order plans in the filled Order to address various concerns and there is an explanatory note<sup>17</sup>.
- 3.50 The Side Agreement has been summarised in a note provided to the Inquiry. CCC and the Ramblers had raised concerns about the approvals

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<sup>16</sup> NPPF paragraph 11

<sup>17</sup> NR-INQ-39



process and maintenance of rights of way after completion of the works. These matters are now the subject of agreement with the highways authority, and so have been dealt with.

- 3.51 CCC remain concerned in respect of the costs they would incur in implementation and has taken issue with NR at a senior level on this. However, CCC does not seek amendment to the Order; it is putting down a marker that the current system, whereby local authority approvals under TWAOs do not require fee payment, or otherwise provide for costs recovery, is inappropriate. This is a matter of policy for the Secretary of State, not specifically related to this Order, however, the analogy with the recovery of costs by drainage boards is inappropriate as there the TWAO disappplies an existing consenting regime – where fees are payable – and substitutes its own approvals process.

### **Benefits**

- 3.52 Closing or modifying the level crossings will bring the following benefits:
- a. Improving the safety of level crossing users, railway staff, and passengers
  - b. Creating a more efficient and reliable railway
  - c. Reducing the ongoing operating and maintenance cost of the railway
  - d. Reducing delays to trains, pedestrians, and other highway users
  - e. Facilitating capacity and line speed increases on the network in the future.

## The Cases in Support

### Andy Tyler on behalf of Fen Line Users Group (S2)

- 3.53 In the NR Statement of Aims<sup>18</sup> it is stated that the benefits of closing or modifying specified level crossings would be:
- a. Improving the safety of level crossing users, railway staff, and passengers
  - b. Creating a more efficient and reliable railway
  - c. Reducing the ongoing operating and maintenance cost of the railway
  - d. Reducing delays to trains, pedestrians, and other highway users
  - e. Facilitating capacity and line speed increases on the network in the future.
- 3.54 In seeking a better and safer railway service for users Fen Line Users' Group (FLUG) supports these aims. FLUG attended NR public exhibitions and discussed the proposals at Association Committee meetings and the Annual General Meeting. Members have been informed of the consultation in The Fenman newsletter and on the FLUG website.
- 3.55 FLUG believes that level crossings are the biggest safety hazard to rail users due to the safety of passengers and train drivers being put at risk and the hold-ups following an incident, which cause delay to passengers including those travelling to and from work or business in London and Cambridge. The withdrawal of a damaged train can lead to rolling stock shortages, resulting in service cancellations. The selection of media coverage in the appendix demonstrates death, delay and injury, which may occur on high profile or minor crossings.
- 3.56 The Anglia Level Crossing Reduction Strategy (ALCRS) has five phases with the Order proposals relating to Phases 1 and 2, potentially deliverable and affordable within NR control Period 5 and 6. FLUG note phases 3 to 5 and Norfolk crossings may be dealt with in control period 6.

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<sup>18</sup> NR4

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 3.57 CCC recognises the strategic objectives of NR in undertaking this project and supports the Order where, in CCC's view, suitable and convenient alternative routes have been identified and/or would be provided.
- 3.58 This Inquiry has been the first of its kind in terms of the number of crossings being sought for closure within a single Order. As such it has (or should have) presented a steep learning curve for all of the parties involved. As time goes by, if more Orders of this nature are proposed, the lessons learned from these earlier Orders (including those in Suffolk and Essex) would allow for some of the issues and considerations, that have been either before the Inquiry itself, or subject to discussion and negotiation during the Inquiry, to be addressed at a far earlier stage in the process, or considered in more defined and concise terms. Time has not been wasted during the Inquiry as it has been important to ensure that all matters have been fully and appropriately addressed.
- 3.59 It has been accepted by NR that the decision whether or not to make the Order is "quasi-judicial" in nature; the decision maker, the Secretary of State, must make his decision based upon all the available and relevant evidence. The Order cannot be made because it seems like a good idea or is desirable for the Applicant, nor could any part of it, be made simply because no one has objected.
- 3.60 The burden of proof rests squarely upon NR to demonstrate, by the production of sufficient relevant evidence, that their proposals have met the requisite statutory tests. The standard of proof is the civil test of on the balance of probabilities.
- 3.61 How NR choose to demonstrate that they have discharged their burden of proof, and what evidence they consider necessary to submit in doing so is a matter for them. However, it is not sufficient for them to state that something is right or wrong, or to put forward certain propositions without substantiating their point by way of the production of the necessary evidence upon which they rely in reaching such a conclusion.
- 3.62 CCC, on occasion, questioned what evidence and papers were submitted to the Inquiry. If documents were not provided, this may represent a deficiency or omission in the evidence which may affect the discharge of the burden of proof. The Secretary of State must be satisfied that he has all of the evidence he requires to make his decision. If he does not, then the Order must fail.
- 3.63 The terms under which an Order may be applied for and made under the TWA are quite general. However, Section 5(6) of the TWA states that an Order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or would be provided, or that one is not required.

- 3.64 In the proposals to which CCC continues to object, NR have put forward proposals to provide an alternative route or routes, so must be satisfied that an alternative route IS required in each instance. If this were not the case then, in line with the financial obligations under "Managing Public Money", and the requirement within the scope of compulsory purchase and acquisition processes that they can only seek to secure the minimum requirement, without betterment, NR would not be seeking alternative routes.
- 3.65 The remaining issue is whether the proposed alternatives would be appropriate. The Guide states that if an alternative is to be provided, the Secretary of State would wish to be satisfied that it would be a convenient and suitable replacement for existing users. NR confirm that they have identified and assessed their proposed alternative routes on this basis.
- 3.66 CCC acknowledges that, unlike many public path order processes, where one might expect the creation of a completely or substantially new alternative route, under the TWAO process, an alternative route may, fully or partially, utilise existing highways. It is the closure of one route, or part of it, and the provision and/or identification of an alternative. Even so, in considering the issues of "suitability" and "convenience", there is still an element of comparison between the current route and any proposed alternatives.
- 3.67 Guidance on the issues that the Secretary of State would wish to hear evidence on were set out in the published "SOM". This included: the impact that individual proposals would have on the public, land owners and local businesses; the impact on other users; flood risk, drainage and environmental impact; and suitability, including length, safety, maintenance and accessibility.
- 3.68 In considering the alternative routes the Secretary of State has indicated that he would wish to be satisfied that it/they would be a convenient and suitable replacement(s) for existing users. There are therefore a number of matters which need to be defined.
- 3.69 In relation to "existing users" it would appear that consideration was given to the type of use a crossing receives within a certain snap-shot in time (i.e., immediately prior to the Order) rather than taking into account the rights legally available to the public, whether used or not immediately preceding the Order. This is contrary to the public interest and CCC submitted that in determining existing users' consideration must also be given to the status of the route.
- 3.70 If consideration of an alternative is restricted to users at the time of survey, the test must be applied liberally, taking account of all legitimate use, however limited or infrequent. Consideration should be given to the circumstances which may have restricted or deterred legitimate use from taking place prior to the Order being made. If a crossing is unlawfully obstructed by the Applicant, it would not be surprising that there was no use by certain types of legitimate user. By analogy, if NR were to close every crossing before undertaking their assessments to identify "existing

- users”, it would be easy to conclude that no alternative routes were required because there were no “existing users”. This cannot be right.
- 3.71 The Secretary of State should exercise a significant degree of caution in considering the balance between “existing users” and “existing rights” so as to ensure that the rights of the public to pass and repass along the highways concerned are suitably and appropriately considered and protected. Protecting such rights should not be viewed as betterment, simply as maintaining the status quo.
- 3.72 The Concise Oxford English Dictionary (2001) defines “Suitable” as: “right or appropriate for a particular person, purpose, or situation”. It defines “Convenient” as: “fitting in well with a person’s needs, activities and plans involving little trouble or effort”. These terms should be given their usual meaning in these proceedings.
- 3.73 CCC maintains that any alternative route that involves an increase in distance to complete the same journey is less convenient. The guidance says that the Secretary of State would wish to be satisfied that it would be a “convenient” and “suitable” replacement. It does not say that an alternative route may be “less convenient”. Distance of travel is only one consideration in terms of convenience, however, it means that in most cases the starting position, with regard to matters of convenience, is that the scales are tipped in favour of refusal of the Order on the grounds that the alternative route is “not convenient”. For NR to discharge their burden of proof they must, at the very, least restore the balance and then tip it in their favour.
- 3.74 Reference was made to the wording in s119(6) of the HA80 – “public enjoyment of the footpath as a whole” – and that such a test does not apply under the TWAO procedure. CCC accept that the additional “expediency” test that is to be applied, having particular regard to the “public enjoyment of the footpath as a whole” under s119(6) of the HA80 does not apply.
- 3.75 However, references in evidence to “enjoyment” should not be taken out of context. The fact that it is referred to as a distinct/additional test in the HA80 should not be relied upon by NR to divorce consideration of “enjoyment” from an assessment of what is “suitable” and “convenient” in the context of the TWAO. CCC submit that the likely impact on “enjoyment” of an existing route is a material consideration in assessing the impact that the proposal would have on the public, users and the local community.
- 3.76 CCC further submit that the “enjoyment” of a proposed alternative route is also a material consideration in terms of its suitability. In real terms, an alternative route is only an alternative if users of the existing way are likely to use it. If they are deterred from doing so, for example as a result of risks (perceived or otherwise) or the environment through which they are expected to walk or ride, they are unlikely to use the route and it is therefore no real alternative. As such, it cannot be said to be “suitable”.

- 3.77 NR's strategic objectives in respect of the Order are: improved operational efficiency of the network; increased safety of rail users and those interacting with railway by reason of [the rationalisation/ removal of] public and private rights across the operational railway; and, more efficient use of public funds in accordance with "Managing Public Money".
- 3.78 CCC submits that in terms of the majority of the crossing proposals to which it objects these objectives have, for the most part, not been met. In terms of operational efficiency, no evidence has been submitted, on a case by case basis, as to how the closures would improve operational efficiency. There are no speed restrictions to be lifted. NR have not, either overall or on a crossing by crossing basis, put forward a safety-based case. They have accepted in cross-examination that if a crossing is open, they consider it to be safe and/or fit for purpose. Their case in this respect has been to seek to reduce risk, and not to improve safety or remove danger. This may be a subtle difference, but it does not meet their stated objective.
- 3.79 Perhaps the only objective that might be met is the efficient use of public funds, but this would only be true if the funds that would be used to maintain the crossings were used to improve other crossing facilities elsewhere, and not simply to meet budget shortfalls or cost-cutting requirements.
- 3.80 CCC accepts that all crossings carry a risk, as does any activity. This does not mean that all crossings are dangerous. Danger and risk are often confused due to the appearing similarity in their meanings, when strictly speaking, there is a difference. The word danger should be used in the sense of 'catastrophe' or 'peril' and is usually employed by people describing situations when one can come under harm due to some fact. The word risk is used in the sense of 'chance.' Both terms carry negative meanings and are words that people use when speaking of something that can happen or harm them.
- 3.81 NR said that if a crossing was open then they must consider it to be safe. It was also said that if a crossing was open it was considered "fit for purpose". This confirms the difference between risk and safety.
- 3.82 Whilst it is accepted that there are problems in comparing risk on the crossings and the alternative routes, especially public carriageways, this is an important factor in considering suitability and convenience of an alternative route. Various assessments and audits have been undertaken to assess the level of risk. These have undoubtedly been carried out in accordance with their defined methodologies and subject to expert consideration on both sides. However, consideration must be given to the perceptions of risk and or danger/safety, as evidenced by actual users of the routes in question. It does not matter how many experts say an alternative is safe or fit for purpose if the actual, or potential, user has, from their personal knowledge and experience, a different perception. If users feel that they cannot or would not use the alternative provided, due to safety concerns, or because it does not meet their needs in the same way, or because it is not as enjoyable, then that alternative route cannot be said to be "suitable".

- 3.83 It was not disputed by CCC that NR hold the expertise in matters relating to the operation of the railways; they were the only party in the proceedings to table witnesses claiming such expertise, which was unchallenged. NR also called witnesses with expertise in the areas of land and compensatory issues, highway design and infrastructure.
- 3.84 However, the NR knowledge and understanding of PROW matters was more limited and theoretical. This was evidenced by the lack of awareness of the Parliamentary Rights of Way Review Committee's Code of Practice for Consultation on changes to the Rights of Way network. NR may, or may not, have inadvertently met, or even exceeded, the requirements of this Code of Practice but one might have expected it to have at least been referenced, given that it is a cornerstone of the good practice that is followed by most Order Making Authorities on a day to day basis when considering changes to the minor highway network.
- 3.85 There was a complete lack of understanding of both the long and short-term implications of creating cross-field paths that would be subject to regular agricultural disturbance. CCC, and its Officers, have the day to day working knowledge of matters relating to PROW management, as would be expected given that CCC are the Highway and Surveying Authority for its area. Within this remit CCC have considerable experience of successfully securing changes to the PROW network.
- 3.86 Therefore, in respect of matters relating to the weighting of the evidence given for and against the proposals, CCC say that the Secretary of State might, quite reasonably, defer to the expertise of NR in relation to matters relating to the operation of the railway. However, the Secretary of State should similarly defer to CCC on matters that relate to changes to the PROW network, not least because it was the only party to offer up evidence from witnesses with actual day to day working knowledge of these matters.
- 3.87 CCC acknowledges, and thanks, NR for the continued dialogue throughout the Inquiry, which has allowed various issues to be clarified and resolved and facilitated the withdrawal of CCC's objections to some of the proposed closures. NR and CCC have entered into an agreement addressing a number of the concerns of CCC regarding the implementation of the proposals. A summary of these matters is set out within the joint statement<sup>19</sup>.
- 3.88 With regard to the Filled Order CCC supports the changes made that have enabled it to withdraw certain of its objections. Being unfamiliar with the TWA process, CCC has tried to ascertain the status of Filled Orders. It is understood that they have no formal status and that there is no guidance on them. Whilst they may be common practice, the lack of transparency makes it very difficult for those unfamiliar with the TWA process. CCC ask DfT to provide amended guidance as to what parties can expect. This would be particularly important if NR undertake further Orders of this nature in other areas.

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<sup>19</sup> NR-INQ-29

**Delivery Costs (as opposed to Commuted Sums)**

- 3.89 CCC would like to submit the following statement regarding the additional financial burden that is to be placed upon the Authority if the Order is to be granted. The delivery of the proposed works would place a considerable extra burden upon the County Council, such as:
- Ongoing liaison with NR
  - Reviewing and approving designs for works
  - Undertaking site inspections before, during and after the works are constructed
  - Approving and certifying works
  - Updating the DMS and other asset records to reflect the changes to the highway network
- 3.90 CCC has finite resources with which to undertake its duties and they are fully committed at a time of significant financial restraint. The requirement to undertake this additional work would create a further workload beyond the normal resources; other projects and statutory duties would be compromised in order to complete this work.
- 3.91 CCC has sought costs from NR for the significant officer time that the delivery of the proposed works would consume. Further, CCC seeks monies to help pay for additional resources that would help deliver the additional burden in a timely manner. NR has informed CCC that this has been raised at or near the top of the NR organisation and that payment for any of these costs has been refused.
- 3.92 CCC is very disappointed that NR refuses to offset the additional burden being imposed upon the Authority. NR has consistently stated that it has to make best use of public money, without recognising that CCC has identical duties. The payment of reasonable sums to CCC for this additional work would not place an additional burden upon the public purse; it would merely move monies from one part of the public purse to another, in line with the required public undertakings. CCC is disappointed that NR does not recognise this fact.
- 3.93 CCC notes that there are detailed protective provisions in the proposed Order at paragraph 9 of Schedule 16 for drainage authorities which includes indemnification for costs. As the Lead Local Flood Authority for Cambridgeshire, CCC is also a drainage authority and, had there been any watercourses falling under its jurisdiction, this clause would have equally applied to CCC.
- 3.94 As NR has agreed to pay the costs of the drainage authorities, CCC considers it entirely reasonable that NR should also pay CCC in its capacity as the Highway Authority for its similar costs incurred by NR's scheme. It seems perverse that drainage authorities should receive their costs but not the Highway Authority who would have a great deal more work to undertake in enabling NR's scheme.



- 3.95 CCC estimates its costs being around £20,000 over the 5 years of the implementation period. In light of the overall £20.8m in savings that NR anticipates making as a result of its scheme, CCC's request represents a very small cost.
- 3.96 CCC will continue to lobby NR at the highest level for the payment of reasonable costs. CCC notes the implications of the TWAO process for other authorities that might be subject to similar works.

### **Submission**

- 3.97 The Secretary of State is respectfully requested to exclude from any Order that may be made, the matters and crossings to which CCC has maintained its objections.

### **Ramblers Association (O26)**

- 3.98 The Ramblers is a registered charity and company limited by guarantee, founded as a voluntary body in 1935. Its objects are to promote the health, recreation and environmental benefits of walking, especially by protecting and extending the network of public paths and access in the town and countryside. There are around 105,000 members throughout England, Wales and Scotland with 1,200 members in the Cambridgeshire and Peterborough area.
- 3.99 The goal of promoting walking relates to use for both transport and recreation. Encouraging people to walk, including to public transport links, benefits the environment in keeping cars off the roads and individuals and the nation by keeping people fitter. Direct, off-road paths encourage people to walk.
- 3.100 Since 2012 the Ramblers have run the Walking for Health project in partnership with Macmillan Cancer Support, delivering strategic guidance for the health walks programme. This includes support, training and promotion for local schemes run by councils, the National Health Service, charities and voluntary groups. The Ramblers organise 45,000 walks per year led by 12,000 volunteers and about 300,000 people take part.

### **Individual crossing objections**

- 3.101 The Ramblers maintain objections to five of the specific crossings proposed to be included in the Order: C07, C11, C20, C25 and C27 on the basis that the proposed alternative route is not suitable or convenient for existing users.

### **Further submissions**

- 3.102 During the Inquiry, the Ramblers provided submissions to the Inspector on:
- the definition of "convenient and suitable for existing users" in the context of section 5(6) TWA;

- the wording of the amended draft Order<sup>20</sup> and NR's request for planning permission<sup>21</sup>; and,
- the DIA carried out by NR<sup>22</sup>.

### **Background context to the Order**

3.103 At the outset of this Inquiry, the Ramblers highlighted that this Order must be assessed in context. And, its context is unique. NR is pursuing the Order as part of its overarching Anglia CP5 Level Crossing Reduction Strategy.<sup>23</sup> This covers the whole Anglia network<sup>24</sup> and the Order is being pursued simultaneously with two other TWAOs:

- The NR (Essex and Others Level Crossing Reduction) Order, which seeks to close or downgrade 59 level crossings across the whole county of Essex, as well as throughout areas of Hertfordshire, Havering, Thurrock and Southend-on-Sea.
- The NR (Suffolk Level Crossing Reduction) Order, which proposes to close or downgrade 23 level crossings on the mainline branches across the county of Suffolk.

3.104 Through these three Orders, NR seeks to close over 100 level crossings. It seeks to do so across entire counties. It is crucial that the Order is not assessed in isolation; it forms part of a bigger picture.

### **Inappropriate scale**

3.105 The scale of the Order, in terms of how many level crossings would be closed in one go, is unprecedented. The novelty of the Order was accepted by NR<sup>25</sup> and it is an element of this scheme which is of serious concern to the Ramblers.

3.106 When PROW are diverted or extinguished under Part VIII of the HA80 – whether under the specific provisions related to level crossing closure (ss118A and 119A) or the more generic provisions of s116, 118 or 119 – one proposal<sup>26</sup> would have its own public path order, consultation process and assessment by local people and the highway authority. This is in stark contrast to NR's use of the TWA procedure for this Order, where so many, entirely unrelated, PROW would be affected in one go.

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<sup>20</sup> NR-INQ-1

<sup>21</sup> NR10

<sup>22</sup> NR-INQ-18

<sup>23</sup> NR18.

<sup>24</sup> Including the Essex region, Cambridgeshire, Suffolk and Norfolk.

<sup>25</sup> Mr Brunnen accepted in XX that the number of level crossings proposed to be closed in the three orders is unprecedented and that it was the first time NR was using the TWAO process to address its strategic need to close crossings. Dr Algaard agreed that the Order was the "first of its type".

<sup>26</sup> More than one right of way can be included in a public path order under ss118 and 119, but they would usually be factually related.

- 3.107 Serious issues associated with the scale have become evident through the Inquiry process; NR had to withdraw from the Order four<sup>27</sup> of the original 29 proposals due to a widespread failure, on its behalf, to serve the requisite statutory notices on a significant number of land interests. This was the reason why the public inquiry for the Essex Order<sup>28</sup> unexpectedly adjourned on day three<sup>29</sup>. Such failings have arisen because of the inappropriate size of the proposed schemes.
- 3.108 The inappropriate scale of what NR is seeking to achieve in these Orders has serious repercussions on a national organisation like the Ramblers, who rely on volunteers and have limited resources. Whilst the Ramblers may be able to properly assess one or two proposed changes to the rights of way network, expecting it to scrutinise over 100 proposals over the same period of time is unreasonable.

### **The risk of setting a precedent**

- 3.109 In their opening statement the Ramblers highlighted the potential for this to be a "test case" for NR, submitting that, if the scheme is approved, there is a chance that NR would roll out similar projects across the entire country. During the Inquiry, NR did not dispute this. In response to the point put in cross-examination, Mr Brunnen stated that "it is fair to say that the process is of interest as a whole".
- 3.110 The potential to set a precedent through this Order is particularly important because the case for the Order is not simply based on a proposal to close or downgrade 25 specific level crossings. It relies on a "strategic case" that sets out NR's justification for all the crossing closures and this includes a standardised methodology for how to pick the crossings that would be closed without the provision of replacement crossing infrastructure, such as bridges or underpasses.
- 3.111 As is evident by reference to the Essex Order, which proposes to close nearly 60 crossings, were this strategic case to be approved and applied in other areas, there would appear to be nothing to stop it from being implemented on a much greater scale (in terms of the numbers of crossings per Order) than has been applied here.
- 3.112 The Ramblers submit that it is possible for the Inspector and the Secretary of State to form the view that some, or all, of the crossings contained in this Order should be closed (having regard to their individual merits), but that the underlying method by which NR chose them was fundamentally flawed. The Ramblers submit that it is open to the Inspector (if she is minded only to recommend that specific crossings should be closed and not that the underlying method is justified) to clearly specify in her report which aspects of NR's case she has based any recommendation for approval on and whether or not the approval

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<sup>27</sup> Three of the proposed crossing closures (C03, C08 and C09) and one of the proposed re-designations of crossing status (C13). NR's withdrawal of these closures was communicated to the Ramblers in a letter dated 6 November 2017.

<sup>28</sup> Which had been scheduled to be the first of the three inquiries to be heard

<sup>29</sup> 20 October 2017

of specific crossing closures should also be read as an approval of NR's underlying strategic case.

- 3.113 The Ramblers submit that the Inspector cannot be satisfied that NR's strategic case provides a sufficiently robust methodology for how level crossing closures should be determined. Therefore, in the event that the Inspector does form the view that some of the level crossings included in the Order should be closed, the Ramblers invite her to nonetheless find that the underlying methodology is flawed.

#### **Objections to NR's "strategic case"**

- 3.114 NR has made it quite clear during the Inquiry that it wants to close all level crossings across the entire country.<sup>30</sup> There are three key reasons why NR seeks to close level crossings:
- to improve safety on NR's network;
  - to reduce the ongoing costs associated with the maintenance of level crossings; and,
  - to better enable operational efficiency improvements.<sup>31</sup>
- 3.115 In relation to safety, NR emphasised that all level crossings have an inherent safety risk (regardless of any relative assessment of safety risk at a particular crossing) and that that risk can only be "eliminated" if the level crossing is closed. The Ramblers do not dispute this. It is also clear that closing level crossings would reduce ongoing maintenance costs and that having fewer level crossings on the network can assist in improving operational efficiency.
- 3.116 However, NR accepts that those three "strategic" reasons, taken alone, cannot justify the closure of a level crossing.<sup>32</sup> And that must be so, otherwise all level crossings could be closed tomorrow without further consideration. NR accepts that there must be some kind of "balancing act", through which the reasons in favour of closure can be assessed against the reasons for keeping crossings open.<sup>33</sup>
- 3.117 The need for such a balancing act arises naturally from the fact that level crossings represent an interface between the railway network and rights of access across land (whether public or private). Those rights of access may be utilised for a variety of different reasons – whether it be to access the PROW network, connect to basic local services, access a farm or business, or reach a private residence. Each level crossing is "unique"<sup>34</sup>

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<sup>30</sup> Mr Brunnen, XX "[we would] like to close all level crossings"; Dr Algaard, XX "we believe every level crossing should be closed"; Mr Kenning, XX stated "absolutely" in response to the question whether NR would like to see all level crossings removed if possible.

<sup>31</sup> See, for example, Mr Brunnen's proof of evidence at 2.3. Dr Algaard agreed in XX that the strategic case is "threefold".

<sup>32</sup> Dr Algaard, XX.

<sup>33</sup> Mr Brunnen, XX and Dr Algaard, XX. Dr Algaard recognised the "impact on wider society" that closure of a crossing could have. And, indeed Mr Turney put, in XX of Dr Buisson (appearing on behalf of the CLAF) that there was a need to work out the negative impacts and weigh these against the public interest.

<sup>34</sup> Mr Brunnen accepted that each level crossing is unique in XX.

and different competing interests would be engaged when considering the closure of each one.

- 3.118 Once it is accepted that a balancing exercise must be carried out which weighs on the one hand NR's three strategic reasons for closing level crossing against, on the other hand, the interests in keeping the crossing open, the crucial question then becomes: how did NR carry out this balancing exercise and how did it thereby choose which crossings to close through this Order?<sup>35</sup>
- 3.119 It is not just the question of whether or not to close a crossing, but also whether any replacement infrastructure would be provided. One key aspect of this Order is that none of the crossings would be replaced with a bridge or underpass at the site of the level crossing. NR accepts that it would need to provide such "replacement infrastructure" in relation to certain level crossings, but that this would be provided during later phases of the Anglia CP5 Level Crossing Reduction Strategy.<sup>36</sup> So the Inspector would also need to assess how the balancing exercise was conducted by NR in order to decide, not only (i) whether or not to close a level crossing, but also (ii) whether to provide anything in its place.

#### **NR's licence and statutory duties**

- 3.120 It is worth highlighting the limits of NR's duties under its licence conditions and other statutory regimes. Mr Brunnen's proof of evidence<sup>37</sup> sets out NR's regulated functions under its licence (section 4) and the wider policy context (section 5). Mr Brunnen cited a number of different statutory and regulatory duties, including NR's Operating Licence under the Railways Act 1993, the National Policy Statement for National Networks (NPSNN) 2014, the Rail Safety Directive 2004 and ORR documents.
- 3.121 These duties require NR to operate a safe and efficient railway. In cross-examination Mr Brunnen accepted that NR's operating licence imposed no absolute duty, but rather a qualified duty – "so far as reasonably practicable having regard to all relevant circumstances".<sup>38</sup> Similarly qualified wording can be seen in the NPSNN 2014<sup>39</sup> and the Rail Safety Directive 2004.<sup>40</sup> Whilst NR must ensure a minimum standard of safety on its network, there is no absolute duty on it to provide a network that is "as safe as possible". Nor, is NR under any duty to improve operational efficiency beyond what is "reasonably practicable". NR's duties are qualified.
- 3.122 Whilst ORR has published a number of documents that emphasise the need to close level crossings, the requirements are qualified, not

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<sup>35</sup> Dr Algaard agreed in XX that under matter 1 of the Statement of Matters, the Secretary of State has asked to be informed on the need for the Order and that this would include an assessment of why particular level crossings have been included.

<sup>36</sup> See further submission on the specifics of this strategy below.

<sup>37</sup> NR27

<sup>38</sup> See sub-para 1.2 of para A1 of NR's Licence, quoted at para 4.9 of Mr Brunnen's Proof of Evidence.

<sup>39</sup> Para 3.12 of the NPSNN 2014, quoted at para 5.4 of Mr Brunnen's Proof of Evidence.

<sup>40</sup> Article 4(1) of the Rail Safety Directive 2004, quoted at para 5.5 of Mr Brunnen's Proof of Evidence.

absolute. For example, the ORR's "Periodic Review 2013"<sup>41</sup> states that "NR must continue to meet its legal safety obligations, improving safety where reasonably practicable."<sup>42</sup> ORR's "Strategy for regulation of health and safety risks – 4: Level crossings"<sup>43</sup> makes clear that whilst crossing closure is encouraged, and should always be considered first in any risk assessment, ultimately:

- The closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses, the legal arrangements for closing rights of way, the need to minimise the possible transfer of risk to other crossings, and the possibility of importing new dangers such as increasing the likelihood of trespass.

3.123 Mr Brunnen agreed in cross-examination that the "Strategy for regulation of health and safety risks – 4: Level crossings" did not prescribe how to assess these many factors nor how NR would decide whether or not to close a crossing. Similarly, the Periodic Review 2013 did not say how NR should reduce safety risks at level crossings.

3.124 Mr Brunnen highlighted that NR has moved from a "reactive" to a "proactive" approach to addressing the safety risk at level crossings. He agreed in cross-examination that the need for a "proactive" approach does not specify how NR should seek to improve safety at level crossings.

3.125 A review of the statutory and policy context is important because it makes clear that NR has needed to devise its own strategy for determining which level crossings to close and how. The approach taken by NR in the Anglia CP5 Level Crossing Reduction Strategy, therefore, needs to be properly scrutinised.

### **Which crossings to close and how?**

3.126 The key document for determining how NR chose which crossings to close in this Order is the Anglia CP5 LCRS<sup>44</sup>, written by Mr Kenning and approved by Dr Algaard as the "client" for the work. It was prepared for the whole Anglia Region, with individual RRDs for the parts of the Anglia Route.<sup>45</sup>

3.127 The ALCRS begins by setting out the overarching purpose behind the strategy:

- The NR company view is that as many level crossings should be removed from the network as practicably possible and the purpose of this CRD (Client Requirements Document) is to set out the CP5 level crossing reduction strategy for the Anglia Route, to provide the high level thought process and show the framework to deliver further reductions in the numbers of level crossings.

<sup>41</sup> extracts in NR15

<sup>42</sup> Para 35 of the Periodic Review 2013: Final determination of NR's outputs and funding for 2014-19, quoted at para 5.9 of Mr Brunnen's proof.

<sup>43</sup> NR14

<sup>44</sup> NR18

<sup>45</sup> The Cambridgeshire RRD is appended to Mr Kenning's Proof of Evidence, Tab 1.

- 3.128 The document goes on to explain why NR should attempt to use a TWAO to close level crossings and the general “decision-making” procedure. The phases of the strategy are set out with five distinct phases and a further “no change” phase.
- 3.129 The first thing to note is that this is clearly a document written by NR for NR, which takes as its starting point that all level crossings are a safety risk and should be removed where possible.<sup>46</sup>
- 3.130 At para 1.1.1, the ALCRS states: *“The best way to close public highways is through a TWAO. In that way, all proposed changes and consents can be consulted in advance, bridges provided where appropriate, and we can argue using the greater public benefit of improved rail services.”* Mr Kenning agreed in cross-examination that the “best way” really meant “... for NR”. It is concerning that the second sentence reads as implying that NR are simply using the argument of “greater public benefit of improved rail services” to make the project fit the TWA procedure. Mr Kenning could “see how it can be read as that” whilst disputing that that was the intention.
- 3.131 Para 1.1.2 states: A little used crossing today can suddenly become a big problem when local circumstances change and the usage dramatically increases. This leads to closure objections and could lead to requiring the deployment of technology to manage the risk. Therefore it is important to start with the least used crossings and work up to the major crossings.
- 3.132 Mr Kenning had to accept that those were “the words on the page” but claimed that if they could divert little used crossings then the impact would not be that great. The Ramblers submit that this paragraph demonstrates a cavalier attitude by NR, who simply want to get rid of the nuisance of level crossings as quickly and as cheaply as possible.<sup>47</sup>

### **No clear test**

- 3.133 A fundamental issue with the ALCRS is the uncertainty surrounding the decision-making procedure. It seems that a filtering process was established through which the numbers of level crossings on a network are first rationalised – through closing level crossings by either extinguishing the rights of way or simply diverting them to alternative existing means of crossing the railway. Then NR plans to install bridges to replace the remaining level crossings. Out of the five phases of the strategy, phases 1, 2 and 4 constitute the initial “rationalisation” stage and phases 3 and 5 would cover the stage to follow – when bridges would be provided. This Order only covers phases 1, 2 and 4<sup>48</sup> (in other words, just the “rationalisation” stage).
- 3.134 The test for whether or not a crossing would fall within phases 1, 2 or 4 unclear and did not appear to be any clearer following cross examination

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<sup>46</sup> Accepted by Dr Algaard during XX.

<sup>47</sup> When Mr Kenning explained that the strategy arose from meetings which started in April 2014 with a new sponsor of the Anglia Route, the point was put to him that this was a month after the March 2014 findings by the House of Commons Transport Committee, documented in the report, *Safety at level crossings, Eleventh Report of Session 2013-14*, dated 7 March 2014. Mr Kenning submitted that the timing was a “coincidence”.

<sup>48</sup> Dr Algaard’s Proof of Evidence, para 2.6.7.

of Mr Kenning. It was highlighted during the Inquiry that a number of crossings had been excluded from the strategy at the time the LCRS was written<sup>49</sup>. It was said that these crossings were excluded because, for example, they were in the middle of a built-up area and it would not be feasible to divert them or build a bridge.

- 3.135 Secondly, it appears that crossings would be extinguished where they are "clearly...unused or have extremely little use". It seems that this is a determination for NR to make, but there did not appear to be any clear parameters for how it would do so. Mr Kenning admitted there was no specific threshold, but that NR would consider their existing data and usage censuses.
- 3.136 Thirdly, crossings would be closed, with diversions for the rights of access that exist across them, if there was a "nearby alternative route" utilising existing access points across the railway. The "nearby alternative route" test is crucial to NR's entire case. Unless a crossing falls into the (i) Appendix D category or the (ii) "clearly unused" category, the initial "short-listing" decision for determining if it would be taken forward as a proposal for closure in this stage of the project, rested on whether NR thought there was a "nearby alternative route".
- 3.137 NR initially carried out a desktop exercise and considered where they had existing structures across the railway which they thought they could use to divert rights of way. The suitability and convenience of any proposed alternative routes would then be further assessed through consultation and the work of Mott McDonald.
- 3.138 The Ramblers made clear, in their opening submissions, that this initial "short-listing" decision was key as the decision as to whether or not a level crossing should be closed, with no replacement infrastructure, rested simply on whether there was an alternative route. That process does not consider who or how many people use that crossing or what they use it for. It does not consider the relative safety risks at that crossing<sup>50</sup> and weigh that against the use of the public rights that traverse it. It does not consider the safety risks at that crossing and weigh that against the safety risks of the alternative route (where the alternative involves walking alongside a road). It does not consider the various costs of different safety risk mitigation measures, such as miniature stop lights, barriers or a bridge, against the level of demand for the rights of way across the crossing.
- 3.139 The Ramblers submit that NR's decision-making process to determine whether or not to close a crossing under phases 1, 2 and 4 of the Anglia Route Strategy did not appropriately consider wider community interests. This is so even having regard to the later stages of project development, when MM carried out further assessments of the alternative routes, and the public were consulted on the adequacy of them. NR seems to think

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<sup>49</sup> NR18 Appendix D

<sup>50</sup> NR accepted that, whilst the ALCRM scores (representing relative safety risks) were relevant as reduction in safety risk is one of the strategic reasons for closing level crossings, a level crossing was not chosen for inclusion in the Order based on its individual ALCRM score or Fatalities and Weighted Index score (Mr Brunnen's proof of evidence at 8.24 and XX).



that as long as a “suitable and convenient” alternative route can be provided, their decision to close a crossing would, thereby, have factored in the wider community interest.

- 3.140 The Ramblers submit that it is possible for there to be a suitable and convenient alternative route, but for there to still be good reasons to keep the crossing open as an access point across the railway. Each crossing is unique and the case for whether it can be closed should be properly considered by reference to its specific circumstances and how it is used by the population. It is not appropriate for NR to apply such a blanket assessment of the case for closure by reference simply to whether or not there is an alternative route nearby.

### **Limitations of MM’s brief and public consultation**

- 3.141 Following the initial short-listing there were 217 proposals for crossing closures across the Anglia route.<sup>51</sup> NR contracted MM to scrutinise the alternative routes and determine if they were suitable and convenient. NR later engaged in public consultation on its proposals. Ms Tilbrook agreed in cross examination that consultation was crucial to ensure that balanced decision-making was achieved.
- 3.142 However, NR cannot rely on either the involvement of MM or the public (through consultation) to ensure that the wider community interests have been appropriately factored into the decision-making process. Neither MM or the public were asked to assess NR’s underlying strategic case for closure of level crossings. MM were not contracted to question the need to close a level crossing.
- 3.143 The Ramblers are concerned with the scrutiny which MM applied to the assessment of alternative routes. It was clarified during cross-examination that “every route has had a site visit at some point” by various teams (such as the road safety auditing team or the design team) but that they “may not have visited every part of every route” as this would depend on when land access was available. Exactly how site visits were carried out, by who, and when was not clear.
- 3.144 The suitability and convenience of an alternative route would need to be considered in relation to the “existing users” who use the rights of way. Therefore, it is concerning that ROW experts were not consulted by MM.

### **The benefits of and barriers to walking**

- 3.145 Mr de Moor<sup>52</sup> gave evidence to the Inquiry about both the benefits of, and the barriers to, walking. He explained how the public health benefits associated with walking are “underestimated” and gave evidence as to the relationship between walking and public health.
- 3.146 Walking is the easiest and most accessible form of physical activity for the vast majority of the population. It is widely recognised as an important form of everyday physical activity by public health experts and is recommended as a way of improving both physical and mental health

<sup>51</sup> Mr Kenning’s proof of evidence at 3.9.

<sup>52</sup> OBJ-26-W1

by Public Health England and the National Institute for Health and Care Excellence. The Government is committed to enabling more people from every background to take part regularly and meaningfully in sport and physical activity, including walking.

- 3.147 The Chief Medical Officers recommend that adults should be active daily, with at least 150 minutes of moderate activity over a week. Currently 39% of adults don't meet these recommendations, of whom 26% are active for less than 30 minutes a week. Low physical activity is one of the top 10 causes of death and disability in the UK. Lack of physical activity is costing the UK an estimated £7.4 billion a year, including £0.9 billion to the NHS.
- 3.148 The Government's current ambition is to make walking one of the natural choices for shorter journeys, or as part of a longer journey, with more people gaining access to safe, attractive walking routes by 2040, and a wider green network of paths, routes and open spaces, as set out in the Department for Transport's Cycling and Walking Investment Strategy (pp7-8)<sup>53</sup>.
- 3.149 The most frequently reported reasons for not walking are set out below. Several are of direct relevance to evaluating the impact of replacing walking routes across level crossings with indirect detours:
- Lack of time
  - The weather
  - Unattractive walking environments
  - Fears for safety and personal security
  - Lack of knowledge of the walking environment and/or of the benefits and ease of walking
  - Lack of motivation

3.150 The replacement of level crossings on off-road walking routes with longer and less attractive diversions, particularly along roads, is likely further to reduce walking and physical activity levels and to increase car journeys, working against several of the stated objectives of Government in both transport and public health.

3.151 The Ramblers submit that these considerations are relevant to an assessment of NR's case and the proposed alternative routes. The Ramblers further submit that the Inspector cannot be satisfied that such considerations have been adequately considered by NR.

### **Conclusions on NR's strategic case**

3.152 The Ramblers submit that NR's strategic case and overarching methodology for choosing which crossings to close, and how, cannot be relied upon. Competing interests – for and against the case for closure –

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<sup>53</sup> OBJ-26-W1-2-Appendix 2

have not been sufficiently balanced and assessed in the decision-making process.

- 3.153 The Ramblers recognise that this Inquiry is not engaged in a judicial review of NR's decision to close level crossings. Concerns relating to NR's decision-making process have been raised because NR is proposing a "strategic" methodology for closure. NR is not proposing to close just one level crossing, based on its specific safety risks, maintenance costs and impact on operational efficiency of the network. Rather, it is putting forward a proposal to close all level crossings via a phased strategy, through which crossings are picked for closure via diversion due to there being a suitable and convenient alternative route. If NR seeks to apply a standardised methodology to the closure of over 100 level crossings,<sup>54</sup> then that methodology – in other words, the decision-making procedure – must be scrutinised.

### **Limitations of the public inquiry procedure**

- 3.154 The Ramblers caution against too great a reliance on the public inquiry procedure to fill any gaps in NR's application. The Ramblers have expended considerable resources in responding to the application having to do so alongside involvement in the Suffolk and Essex Inquiries. There is a danger of allowing the burden to fall on the public inquiry procedure, and objectors, who would need to attend the inquiry, to ensure that a sufficient balancing exercise is carried out.

### **Inadequacies of NR's evidence**

- 3.155 At a number of stages in this Inquiry, there has been a concerning amount of information missing from NR's application documents. This information is relevant to the matters on which the Secretary of State wishes to be informed. It is particularly concerning where NR is relying on an overarching and strategic methodology through which it seeks to justify the closure of level crossings across an entire county. If NR is really seeking the approval of the Secretary of State for this "fresh approach"<sup>55</sup> then the Ramblers would have expected much more diligence in ensuring sufficient information had been provided to enable the Inspector to adequately scrutinise the project.
- 3.156 A number of relevant documents have now been produced in response to the questioning of NR's witnesses. For example, a note was produced documenting a break-down of the costings for the crossings<sup>56</sup> and Appendix B of NR18 was produced to the Ramblers<sup>57</sup>. NR's prior non-disclosure of the DIA documents meant that objectors were unable to consider the information prior to the start of the Inquiry.
- 3.157 Dr Algaard's proof of evidence contains estimates for the cost savings to be expected for the entire Order.<sup>58</sup> This is clearly relevant in a case

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<sup>54</sup> The combined number of proposed closures in the Cambridgeshire, Essex and Suffolk Orders.

<sup>55</sup> NR18 at 2.1.1.

<sup>56</sup> NR-INQ-05

<sup>57</sup> although it does not appear to have been provided to the Inspector

<sup>58</sup> See Dr Algaard's proof of evidence at 2.2.5, quoting a renewals cost saving of £3,311,150 over a 30-year period and at 2.2.8 and 2.2.9, figures of £15,063,675 and £5,801,760 respectively.

in which NR is relying on cost savings as one of the three key strategic reasons behind the need to close level crossings. However, it was confirmed during cross-examination that these Order-specific cost saving figures had been included in her proof of evidence for this Inquiry in response to questions (on the lack of such evidence) put to her in the Essex Inquiry on behalf of the Ramblers.

3.158 The burden should not be on objectors to actively request sufficient information to enable a proper scrutiny of NR's application. Such information should have already been put forward by NR itself in order to justify to the Secretary of State the need for this Order.

3.159 The failure to produce this evidence at the outset, again, indicates that the scale of the proposal is inappropriate. The fact that there have been so many gaps in NR's evidence is likely due to the scale of the task that NR have set for themselves. Through proposing three Orders simultaneously it seems that NR has bitten off more than it can chew.

### **Preferred approach – crossing specific assessment**

3.160 The Secretary of State has asked to be informed about the "main alternative options considered by NR and the reasons for choosing the proposals comprised in the scheme".<sup>59</sup> NR have relied on a strategic case to justify the closure of level crossings. It has also relied on a standardised methodology for how it determined which level crossings to close by way of diversion. It was open to NR to, instead, adopt a crossing-specific approach to deciding whether or not a particular crossing should be closed and, if so, whether it could be closed by diversion. This would still be a "proactive" approach to addressing risk at level crossings, but it would better accommodate the individual circumstances of each level crossing.

3.161 The Ramblers would prefer the crossing-specific application of a "public interest" test similar to what has been proposed by the law commission and endorsed by the House of Commons Transport Committee in its report on Safety at level crossings (7 March 2014) (at paras 28-29)<sup>60</sup>. As set out by the Transport Committee, this test would consider a "non-hierarchical" and "non-exhaustive" list of the following factors:

- the safety of the public;
- the convenience of the public;
- the efficiency of the transport network (including the network of public paths);
- the cost of maintaining the crossing;
- the need for the crossing and its significance for the local community (including the protection of heritage); and

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<sup>59</sup> SOM 2

<sup>60</sup> OBJ-26-INQ-02

- the costs and environmental impact of any works needed to replace the crossing or upgrade other crossings.

3.162 This would be a crossing-specific test, through which, for example, the safety risk at a particular crossing is weighed against the significance of that crossing for the local community. Dr Algaard said that, in her view, NR's proposals for this Order have considered these factors. However, if it is accepted that the "public interest" test is to be applied on a crossing-specific basis, then it is difficult to see how this can be so. NR has clarified that it did not consider the ALCRM score at a particular level crossing, when considering its case for closure. Nor, does it appear that the specific cost of maintaining that crossing weighed into the decision-making process relating to closure. On that basis, it would not have been possible for NR to weigh up points (i) and (iv) against, for example, point (v).

### **Crossing-specific objections**

3.163 Notwithstanding, and without prejudice to, the above submissions, the Ramblers object to a number of the alternative routes proposed by NR on the basis that they are not convenient and suitable replacements for existing users.

3.164 The Ramblers submitted a note to the Inquiry setting out how the Ramblers interpret the "convenient and suitable replacement for existing users" test in the Guidance to TWA Procedures<sup>61</sup>. During cross-examination it was agreed that each route would need to be assessed individually and that the following factors are relevant to an assessment of suitability and convenience of an alternative route:<sup>62</sup>

- length
- accessibility
- safety
- scenic views (including enjoyment and journey quality)
- flooding
- width
- how the ROW network may be disconnected.

3.165 It was accepted that these factors can interrelate. It was also agreed that where NR are relying on a route which already exists on the highway network for the proposed alternative route, then this constitutes an extinguishment rather than a diversion to the PROW.

3.166 The Ramblers submit that a new route would need to be of the same protected legal status as the existing route. NR, however, take the view

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<sup>61</sup> OBJ-26-INQ-05

<sup>62</sup> Ms Tilbrook XX.

that where a public right of way is diverted, the alternative route would need to be highway.

- 3.167 At paragraph 4 of the Ramblers' note, it is emphasised that "the Inspector must have regard to who is currently using each of the rights of way proposed to be diverted, as well as the purpose for which they are using it." It was agreed that to assess this part of the test, the Inquiry would need to know who the existing users are and the purpose for which they use the route.<sup>63</sup>
- 3.168 Whilst it is essential to a proper consideration of the suitability and convenience test that the Inspector has regard to those who are currently using the route, the Ramblers wish to clarify that they interpret the term "existing users" to mean not only (i) those who currently use the route but also (ii) anybody who has a legal right to use the route. There would still be "existing users" of a right of way in circumstances where that right of way has, for example, been unlawfully closed or obstructed.
- 3.169 The "suitability and convenience" test incorporates an assessment of public enjoyment of the route as a whole and is one of the factors in assessing whether it is a suitable and convenient replacement.
- 3.170 When deciding whether a route is better or worse there is an element of subjectivity but in deciding the expedience of confirmation of an order under section 119 of the HA80, the legislation most commonly used in such cases, the Inspector must have regard to the effect "*on public enjoyment of the path or way as a whole...*". The example decision relating to The Council of the London Borough of Harrow Harrow School Playing Fields (Footpath No 57) Diversion Order 2013 and Harrow School Playing Fields (Footpath No 58) Diversion Order 2016<sup>64</sup> illustrates the point that in a recreational walk, though extra distance may not be a negative factor, general directness along natural desire-lines is preferred over unnatural 'dog-leg' diversions.

### **Conclusion**

- 3.171 NR is presenting over 20 proposals for crossing closures for which they submit they have got the balance right. But in relation to a number of the crossings, CCC, the Ramblers Association, Cambridge Local Access Forum (CLAF), the National Farmers' Union (NFU) and a number of other individuals all disagree that this is so.
- 3.172 The Ramblers submit that for the reasons set out in these submissions, the Inspector should conclude:
- That the use of a TWAO for the purposes of this scheme is inappropriate and unlawful;
  - In the alternative, the Order should not be made because the objects of the Order could be achieved by other means (section 13(2) TWA);

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<sup>63</sup> Ms Tilbrook XX.

<sup>64</sup> Planning Inspectorate references FPS/M5450/4/1 and FPS/M5450/4/3

- In the alternative, NR's strategic case cannot be endorsed because it fails to appropriately balance the competing interests that are engaged in the decision as to whether or not a level crossing should be closed; and,
- Furthermore, and in the alternative, a number of the alternative routes being proposed by NR are not suitable and convenient replacements for existing users. In the event that the Inspector were to recommend that the Order be made, the Ramblers request that these particular crossing proposals be removed, namely C07, C11, C20, C25 and C27.

### **National Farmers Union (O43)**

- 3.173 The NFU raised its concerns throughout the Inquiry over NR closing many of the crossings as highlighted in the Order for Cambridgeshire. The main issue is that NR have not consulted and negotiated with landowners in regard to the closures and have not fully understood the impact of closure to private users with vehicles on farm businesses.
- 3.174 It is stated under section 5(6) of the TWA that an Order under section 1 or 3 shall not extinguish any public right of way over land unless the Secretary of State is satisfied, a) that an alternative right of way has been or would be provided, or b) that the provision of an alternative right of way is not required. The NFU has highlighted that it is imperative that no right of way should be diverted over agricultural land, taking that land out of production, unless NR can show that it is required. The NFU believe that NR have not been able to prove this for many of the proposed crossing closures.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 1 The aims and the need for the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Scheme ("the scheme")**

- 3.175 The scheme aims to close or downgrade 25 level crossings in the County of Cambridgeshire [3.1]. NR have an objective to remove passive level crossings<sup>65</sup> from the rail network by 2040 [3.11] due to concerns over the risks posed by such crossings [3.2 – 3.9].
- 3.176 The Statement of aims sets out the benefits sought by NR [3.52, 3.77, 3.114]. These objectives were supported by rail users [3.53 – 3.55], operators [9.4 and 9.5] and recognised by CCC [3.57]. CCC withdrew objections where they felt suitable and convenient alternatives would be provided [3.28 & 3.29]. The Ramblers similarly withdrew some objections, maintaining those where they felt that the proposed alternative route was not suitable or convenient for existing users [3.101].
- 3.177 There was considerable argument about whether the Order was made under the appropriate legislation, due to the objective of improving the safety of level crossing users, railway staff, and passengers [3.52 and 3.53]. I found there to be a 'tension' in NR's case seeking to justify closures partly for safety reasons but not wishing to rely on that entirely due to question over the legislation. NR indicated that where level crossings were open they were safe [3.81] and there was then discussion on risk [3.80, 3.82].
- 3.178 Clearly level crossings are a risk factor and this risk reduction lies behind the strategy taken forward [3.20]. I do not consider it necessary to deal with the arguments regarding NR's licence and statutory duties [3.120 – 3.124] except to agree that it does leave NR to devise their own strategy to deliver the expected outcomes [3.125]. On the evidence as a whole a reduction in level crossings would lead to a reduction in risk and an improvement in safety.
- 3.179 In terms of reducing ongoing operating and maintenance costs in relation to the railway, despite some discussion of evidence availability [3.11, 3.156] it was accepted that closing level crossings would reduce costs for NR [3.13, 3.115]. CCC indicated the difficulty they have found with the process, which appears to leave CCC with a maintenance liability simply falling on a different part of the public purse [3.51, 3.89 – 3.96]. I do not consider it appropriate for me to comment on these matters, which relate to higher level policy issues.
- 3.180 There was agreement between NR and CCC that the overall cost would be less than the maintenance, which has been taken to include upgrading,

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<sup>65</sup> Those where users make the choice to cross the railway line



of level crossings [3.12, 3.79, 3.95]. The Ramblers referred to the possibility of individual crossings costings [3.161] and generic costings were provided<sup>66</sup>. In this case, I consider that the Secretary of State can reasonably rely on the overall scheme costs savings rather than a costs/benefits analysis for each crossing [3.12, 3.14].

3.181 The matters of a more efficient and reliable railway, reduction in delays to trains, pedestrians, and other highway users and facilitating capacity and line speed increases on the network in the future sit together in terms of operational efficiency improvements [3.19 and 3.114]. It is clear that NR wish to remove level crossings from the network, finding them a constraint [3.15 and 3.17] on development and management of their network. There is no crossing-by-crossing basis for how operational efficiency would result [3.78]. However, there was evidence relevant to certain crossings, for example, in relation to King's Lynn Service Enhancement Scheme [7.18].

3.182 This is an area of economic growth and so it seems there would be greater likelihood of further such schemes, for example in relation to the development of the new town at Waterbeach [7.19.11]. As such, the removal of constraints may be justified [3.16]. Delays arise from incidents on the railway line [3.55] and it must be accepted that removing a level crossing reduces the possibility of such an incident occurring at that particular location.

3.183 On balance, I consider that the Secretary of State can be satisfied 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 and 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.

3.184 However, I consider that further matters remain relevant, as set out below.

## **SOM 2 The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme**

3.185 In terms of the overall process the aims of the scheme – to remove as many level crossings as possible from the network [3.11, 3.18 and 3.127] – was the starting point. Although there may be other ways to carry this out, for example through the HA80, NR took the view that this could not provide an appropriate alternative means to carry out all the processes engendered in the proposed Order.

3.186 It may be arguable that a TWAO would be strictly necessary to achieve the diversion and extinguishment of minor highways. These processes are carried out on a regular basis by highway authorities under the HA80 and the Town and Country Planning Act 1990 (TCPA). However, in terms of the scale of change proposed [3.105, 3.106] it seems unlikely this could be easily achieved through those procedures. The ability to utilise

<sup>66</sup> NR-INQ-05, NR-INQ-35, NR-INQ-36, NR-INQ-36a and NR-INQ-36b

- existing highways is another potential factor in determining the process [3.66].
- 3.187 In terms of individual crossings there have been alterations to some proposed routes during consultation [4.10], with some crossings removed from the initial proposed overall scheme. Further changes have been proposed through the Inquiry process [3.10, 3.58].
- 3.188 In general, NR have identified the routes to be diverted due to the availability of alternatives in the first instance [3.21]. Nevertheless, I consider that, in putting forward those alternatives, NR have determined that they are necessary under the TWA [3.37, 3.63, 3.64, 3.174]. If this was not the case, then extinguishment would be the cheaper option and would have to be followed in line with their own financial obligations.
- 3.189 The recommendations for each crossing take account of the arguments made in relation to the necessity. I have made particular comment on this point, advising that particular alternatives should, or should not, be included in the Order, where I considered it necessary for certain proposed routes [7.5 and 7.14].
- 3.190 The Ramblers have indicated their preferred approach to this process [3.160 – 3.162]. There was no indication that NR had looked at this as an alternative approach and so I cannot provide further information. The Secretary of State will be aware of the Transport Committee Recommendations. It is open to him to determine that this Order should not proceed on the basis that this recommendation may not have been followed in the development of the ALCRS.

### **Scale of the Order**

- 3.191 It was clear that the scale of the Order caused issues for all parties, including NR [2.11, 2.12, 3.27, 3.107, 3.108]. Nevertheless, concerns regarding potential precedent for Orders of this type [3.103, 3.104, 3.109 – 3.110, 3.114] are not matters which I consider should inform the decision-making process. The comments as to the appropriateness of the Guide in such circumstances should be noted [3.88].

### **Existing users/status of routes**

- 3.192 The Guide refers to 'existing users' without further definition, perhaps because the term appears obvious in its context. However, whether this referred to those actually and physically using a route at the time of a proposal or those legally entitled to do so led to some discussion [3.38 – 3.40, 3.69 – 3.71, 3.144, 3.166, 3.167].
- 3.193 Care must be taken that landowners – whether public or private – do not take advantage of temporary circumstances to make a case for change. There was evidence on some of these routes of illegal changes to the rights of way network, which would alter the possible existing physical use of a route [for example, 7.2.65, 7.5.25]. Although NR argued that the lack of protest at a blockage might indicate who should be considered an 'existing' user I consider that the Secretary of State should take a

broader view [3.71, 3.168]. I have made the recommendations on this basis.

### **Suitable and convenient**

- 3.194 The Guide sets out that "*The power to extinguish a public right of way is however restricted by section 5(6). This provides that a section 1 or 3 order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided, or that one is not required. If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.*" [3.65].
- 3.195 This is guidance not statute, as is the case with similar matters mentioned in sections of the HA80 [3.41, 3.42]. I consider the definitions provided to be reasonable [3.72]<sup>67</sup>, accepting that there is an element of subjectivity [3.163, 3.170]. Various factors might be found relevant, and they may vary from case to case, depending on factors such as the reason for use of a route, e.g. leisure or travel [3.73, 3.164, 3.165]. I consider that 'enjoyment' is a relevant factor, albeit more limited than might be the case in a HA80 Order [3.74]. This is because the enjoyment, whether relating to a view or to a preference to walk off-road rather than on-road can affect decisions to use routes [3.75, 3.76, 3.149, 3.169] and NR indicate that they recognise the wider benefits accruing from such use [3.43].
- 3.196 This has been included within the SOM [3.67] and so has been looked at for each crossing, bearing in mind the arguments discussed here.

### **Witnesses to the Inquiry**

- 3.197 In relation to the weight to be given to witness evidence NR provided expertise in relation to the railway network [3.83]. The Inquiry was greatly assisted by other experts in various areas, such as compulsory purchase, walking [3.31, 3.32, 3.98 – 3.100 and 3.145 – 3.151] and public health matters, as well as individuals, whether landowners [for example, 7.5.34 – 7.5.41], users of the railway [7.1.34 – 7.1.46] or users of the rights of way [for example, 7.2.70 – 7.2.78].
- 3.198 The evidence of Ms Tilbrook was fair and balanced throughout [3.48]. It would be fair to say that the CCC witnesses covered a broad range of interests and understanding of wider CCC policies was not always part of their evidence [3.30]. Nonetheless, I consider that witnesses held the expertise in their particular field of experience and, as such, the weight to be given to the evidence did not always sit with NR witnesses [3.84 – 3.86].
- 3.199 In making the recommendations in relation to each crossing to the Secretary of State I have taken account of all the relevant evidence provided, including my own site visits both accompanied and unaccompanied [3.33 – 3.36, 3.59 – 3.62, 3.143, 3.144, 3.155 – 3.158]. The inquiry procedure [3.154] has allowed further discussion of matters,

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<sup>67</sup> OBJ-26-INQ-08

which could have been dealt with at an earlier stage [see for example 3.49, 3.87, 3.173 and 7.1.86]. However, there are always likely to be certain matters that alter in the course of an inquiry of this type.

### **The strategy**

- 3.200 The strategy itself was not the subject of the Inquiry, which focussed on the outcome of the strategy – the draft Order [3.24]. Information on the strategy and methodology was available [3.22, 3.23, 3.25, 3.27, 3.126 – 3.139]. I do not consider it appropriate or necessary to make any assessment of the underlying strategy, which includes further phases which may determine that replacement infrastructure is required. In the Inquiry process I consider NR were clear that this had not been a discussion in relation to these particular routes [3.119 and, for example, 7.3.38 and 7.3.39].
- 3.201 It remains open to the Secretary of State to comment on the strategy, should he see fit to do so [3.112, 3.113, 3.139, 3.140, 3.152, 3.153].

### **Conclusion**

- 3.202 NR have put forward an Order which they feel can be justified as a whole under the TWA. 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. However, I disagree that this must weigh only against a 'significant adverse effect on the rights of way network' [3.45], or indeed on private users. This is not set out in the legislation, or the Guide.
- 3.203 Other interested parties have raised matters which they believe show that the Order, or parts thereof, do not meet the relevant legislative tests [3.78, 3.171].
- 3.204 I consider 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 [3.44], and the other affected interests, public and private, who may experience a negative impact [3.116 – 3.118].
- 3.205 The 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 [3.172].

## 4. STATUTORY REQUIREMENTS

### SOM 9 Whether the statutory procedural requirements have been complied with

#### The Case for the Applicant, NR

- 4.1 NR has undertaken extensive consultation throughout the development of the ALCRS. This helped inform the specification of the scheme, enabling key stakeholders and members of the public to provide feedback on the emerging proposals, which has been used to refine the solutions for each level crossing.
- 4.2 A consultation strategy was developed to adhere to the statutory requirements from Rule (10(2)d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (2006 Rules). It helped to ensure that the consultation process is inclusive and effective, improving the acceptability of the proposals to be applied for within the TWAO and increase the level of confidence that robust proposals were developed. It has taken account of guidance and best practice procedures to develop a more wide-ranging approach to pre-application consultation:
- The DfT Guide to TWA Procedures;
  - The Government's 'Code of Practice on Consultation';
  - Pre-application requirements for Development Consent Orders promoted under the Planning Act 2008. Whilst this is not specifically applicable to a TWAO scheme, NR have taken cognisance of relevant best practice and considered a range of approaches; and
  - Planning Practice Guidance published by the UK Government in March 2014 (which supersedes the 'Code of Practice on the Dissemination of Information during Major Infrastructure Developments', which is referenced within DfT's Guide<sup>68</sup>).
- 4.3 The consultation planning recognised that effective and on-going engagement with the following wide range of stakeholders would be key to the successful promotion of the TWAO:
1. Strategic stakeholders (Local Planning and Highway Authorities; MPs, Councillors, Parish Councils etc.)
  2. Statutory consultees (i.e. as identified within Schedules 5 and 6 of the TWA)
  3. Landowners (including tenants, occupiers, and parties with private rights of way)
  4. Local access, user, and interest groups
  5. The public

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<sup>68</sup> Following the update to the NPPF there have been updates to some parts of Planning Practice Guidance, including 'Consultation and pre-decision matters', however, this post-dates the consultation and so is not applicable.

4.4 While there were defined periods of public consultation, engagement with key stakeholders such as landowners, local authorities and statutory consultees was a continual process. The stages of consultation were:

- Round 1<sup>69</sup>: (April to July/August 2016) Initial options for each level crossing presented to stakeholders, including landowners, with formal public consultation in June 2016 to support the option selection process (GRIP Stage 2). Stakeholders and members of the public invited to submit feedback which informed development of preferred solutions ahead of round 2. The proposal drawings were made available showing potential route options but not specifying the type of proposed right of way of potential extinguishments;
- Round 2<sup>70</sup>: (August/September to November 2016) Preferred option (generally a single option) for each level crossing presented, to gain buy-in to the preferred option and refine it based on feedback. Formal public consultation held September 2016. Proposal drawings made available to parties showing proposed routes including the type of right of way as well as extinguishments;
- Round 3 Information Update (December 2016 to January 2017) to highlight changes to proposals as a result of the feedback received during Round 2. The proposal drawings were made available to show the changes made. There were seven crossings (grouped into five packages) included in the December 2016 Information Update:
  - C06 Barrington (subsequently removed from scheme)
  - C08 Ely North<sup>71</sup>
  - C26 Poplar Drove & C27 Willow Row package
  - C09 Second Drove<sup>72</sup> & C24 Cross Keys package
  - C20 Leonards

4.5 At each of these stages, the public and stakeholders were invited to discuss and comment on the entirety of the proposals including the route options, specific features and need for the scheme.

- Round 4 (January to February 2017) continuing Landowner Engagement (undertaken by Bruton Knowles ("BK")).

4.6 CCC is a non-metropolitan county council and, as the local highway authority, is a statutory consultee for the purposes of the 2006 Rules. Pre-application consultation was carried out with the local planning authorities and CCC from summer 2014<sup>73</sup>. Workshops and telephone conferences were held jointly with the county and district councils to discuss the principles and details of the proposals:

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<sup>69</sup> NR30-2, Appendix 4 Round 1 Consultation Material

<sup>70</sup> NR30-2, Appendix 5 Round 2 Consultation Material

<sup>71</sup> Removed from the scheme due to issues with service of notice

<sup>72</sup> Removed from the scheme due to issues with service of notice

<sup>73</sup> NR05, part 3.3.1

- 30/09/2015 (CCC workshop only)
- 26/7/2016 & 01/08/2016 (workshop CCC & District Councils)
- 11/10/2016 (workshop CCC & District Councils)
- 16/12/2016 (telecon CCC)
- 17/01/2017 (Network Rail meeting with CCC)

- 4.7 NR are satisfied that the consultation activities complied with the statutory requirements, adhered to best practice and in some cases exceeded the requirements<sup>74</sup>.
- 4.8 It is commonplace for those opposed to infrastructure schemes to say that they have not been consulted when what is meant is that the promoter has not acceded to their consultation responses.
- 4.9 The consultation report makes clear that there has been meaningful, thorough and repeated consultation on the Order proposals – more than required by the law or as a matter of policy. The consultation was meaningful both on the inclusion of particular crossings, and on the detail of diversionary routes. The proposals have changed as a result of consultation. The Ramblers' submission that the principle of closure was not consulted on is wrong – NR invited responses on this point, asking "*To what extent do you agree with the changes proposed at the level crossing itself?*" in the Proposals Questionnaire at NR5.
- 4.10 As a result of consultation with stakeholders, landowners and the public, the design at 17 of the 33 level crossings<sup>75</sup> has been substantially amended. Three crossings were removed from the process due to stakeholder consultation responses whilst others have minor changes<sup>76</sup>.

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<sup>74</sup> NR05 Table 2.1

<sup>75</sup> The number at the start of the project

<sup>76</sup> The final number of crossings considered in this Report was 25

## The Cases in Objection

### Ramblers Association (O26)

- 4.11 The public were consulted primarily on whether or not a suitable and convenient route had been provided. They were not consulted on whether a level crossing should be closed at all or whether they might have preferred (a) to leave the level crossing as it is or (b) to close it. NR appeared to take the position in cross-examination that the burden should be on consultees to bring a compelling case that there was a need to keep the crossing open in which case NR "would have considered it". This approach is substantively different to a procedure where there is active consultation on whether or not a crossing should be closed at all.
- 4.12 The limitations on consultation was not made sufficiently clear to consultees. The consultation documents in Round 2<sup>77</sup> show that significant amounts of crossing-specific safety information was provided, including the ALCRM score and the number of previous incidents of misuse, near misses and accidents. The provision of this crossing-specific information would have led the public to conclude that the safety risk at the crossing was relevant to the decision to close it. Yet it is now clear from NR's evidence, that the ALCRM score did not factor into the decision. NR highlighted that all of the strategic benefits of closing crossings were set out in the public consultation documents. The Ramblers nevertheless query whether it was clear to the public the basis on which level crossings were picked for closure.
- 4.13 It was put in cross-examination that the consultation materials were misleading in this regard, with the suggestion that it would have been easy for NR to clarify that the ALCRM score of a particular crossing had not been used to pick that crossing for closure. The response was that this would not have made any difference.
- 4.14 Whilst members of the public may reasonably have thought they were being consulted on whether the crossing should be closed, in reality they were not. This undermines the value of public consultation as a mechanism by which the wider community interests is factored into NR's decision-making process. It is one thing for the public to say, "if the crossing has to be closed, then this alternative route may be acceptable". It is quite another for the public to say, "this crossing can be closed because the alternative route is acceptable". Having heard the evidence, it appears that the former question was consulted on, but not the latter.

### National Farmers Union (O43)

- 4.15 NR have not consulted and negotiated with landowners in regard to the crossing closures. As a result, they have not fully understood the impact of closure to private users with vehicles on farm businesses.

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<sup>77</sup> NR05, Appendix C3



## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 4.16 The matters on which queries were raised in relation to statutory requirements related to, pre-application consultation in developing the proposals and formal consultation on the draft Order, including the notices placed on site.
- 4.17 Some matters relating to consultation and notices are referred to in the individual crossings, see C04, [7.2, paragraphs 7.2.141 and 7.2.142], C07, [7.3, paragraph 7.3.79], C11, [7.5, in particular paragraphs 7.5.88 – 7.5.91] and C14, [7.7, paragraphs 7.7.48 – 7.7.49].

### Pre-application consultation

- 4.18 As required by Rule 10(2)(d) NR has supplied a report summarising the consultations<sup>78</sup>. NR undertook rounds of consultations as set out [4.1 – 4.4, 4.6 and 4.7] and there was reasonable public engagement. It is the case that changes were made to the design in response to the consultation [4.8].
- 4.19 With regard to landowner engagement [4.5] it is accepted that there will be a point at which the applicant has to decide on the best way forward and cannot respond further to suggestions. I accept, as said to me at the Inquiry when indicating to NR that I expected them to keep negotiating with landowners throughout the process to try to resolve certain objections and concerns, that some landowners may hold out in the hope of a 'better deal' financially or otherwise; compulsory purchase is often the backstop. However, the number of landowners and members of the public raising concerns about consultation and lack of continuity – particularly in relation to the landowner contact – suggests a stretching of the process.
- 4.20 The continued discussions during the Inquiry were helpful, and I adjourned as necessary for certain matters, for example in relation to C28 Black Horse Drove [7.15]. Nonetheless, I consider that some matters could have been dealt with more appropriately through earlier constructive consultation, as suggested in the Guide<sup>79</sup>. In particular, I consider the situation in relation to C01, C02, C33 and C34 [7.1], where only two of the three private crossings are now recommended for closure but it is not known which [7.1.33], could and should have been dealt with at a much earlier stage [4.15]. There was some evidence suggesting a failure to inform landowners of the 'design freeze' proposals [7.5.91] prior to the formal consultation process.
- 4.21 I consider it is the case that the NR pre-order consultation related to whether a suitable and convenient alternative route would be provided [4.11]. NR were seeking to close level crossings to meet their objectives,

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<sup>78</sup> NR05

<sup>79</sup> Paragraph 2.2 and general advice on consultation

as set out in the strategic case [section 3]. Although NR went to great efforts in cross-examination to say that safety was not the driving force behind the Order, I consider it clear from the objections that the public understood this to be the main issue. The Round 1 consultation material<sup>80</sup> listed five matters [4.12], as set out below, but the main focus for objectors related to safety, for example [7.2.52, 7.2.84 – 7.2.104, 7.2.111 and 7.3.26].

- Improve the safety of level crossing users
- Deliver a more efficient and reliable railway, which is vital in supporting the regional and UK economy
- Reduce the ongoing operating and maintenance cost of the railway
- Reduce delays to trains, pedestrians and other highway users
- Improve journey time reliability for all railways, highway and other rights of way users

4.22 As such there was a limitation on the pre-order consultation [4.11] and the consultees may have been led in their responses by the information provided to them and their understanding of the intention of the process [4.14].

4.23 However, whether this was appropriate or not is not a matter which I consider the Secretary of State is required to determine. There has now been a public inquiry, which was open to all to attend and provide evidence if they wished. As such, I consider that the Secretary of State can be satisfied that no prejudice should arise in relation to this matter.

#### Formal consultation

4.24 It will be noted from the procedural matters that there were problems with the service of notice on owners and occupiers, as required by Rule 15, which resulted in the removal of some crossings from the Order [2.11 and 2.12]. However, despite this review there were still issues arising in relation to this matter [7.5.93, 7.5.94, 7.7.48 and 7.7.49]. Those mentioned have been aware of the process and so cannot be said to have been prejudiced by the errors arising. However, this still raises a concern that there were further unidentified parties who should have been served notice. It would be open to the Secretary of State not to make the Order until satisfied that all relevant parties had received the appropriate notice.

4.25 Concerns were raised generally about the notices posted regarding the Order. The greatest number of comments were made in relation to this on C04 [7.2, 7.2.42, 7.2.56, 7.2.66, 7.2.73 and 7.2.105]. NR were satisfied that they had complied with the requirements of the 2006 Rules [7.2.17 and 7.2.18]<sup>81</sup>.

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<sup>80</sup> NR05, Appendix C2

<sup>81</sup> NR-INQ-02

- 4.26 Photographs were submitted by NR of notices in relation to C04<sup>82</sup>. However, the photographs submitted by one of the objectors<sup>83</sup> are a fair reflection of my site observations, not just in relation to this crossing but generally, where notices remained in place.
- 4.27 Whilst NR, or their agents, may have felt they followed the letter of the requirements of the 2006 Rules the point of notices is to ensure that the public are aware of, and able to comment on the proposals. Paragraph 4(2)(b) and (c) specifically allow that a version of the form adapted to meet the circumstances of the particular case or a form which has substantially the same effect would be acceptable. I do not consider that printing notices double-sided and with so many matters included, not directly relevant to the proposal in that area, is helpful.
- 4.28 Paragraph 14 (9) of the 2006 Rules sets out that "The applicant shall use his best endeavours to ensure that every notice displayed under the provisions of paragraphs (6) to (8) shall continue to be displayed in a legible form until the expiry date for objections." I do not consider that these notices could be reasonably said to be in a 'legible form' and I agree with CCC that the way in which they were posted on site was not appropriate [7.2.66].
- 4.29 It is difficult to say whether prejudice has arisen as a result of the way in which the notices were posted, in relation to C04 or any other crossing. There were a number of objections and representations in relation to the overall proposal and individual crossings, which suggests people have found sufficient information to engage with the process. However, given the poor compliance with onsite notices the Secretary of State may wish to consider whether a further onsite notice period should be undertaken in relation to any crossings which are determined to be included in the Order.
- 4.30 Other statutory requirements appear to have been met as set out in the Compliance Folder<sup>84</sup>.

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<sup>82</sup> NR-INQ-17, Appendices 3 & 4

<sup>83</sup> OBJ12, W12, Proof of Evidence, Appendix 1

<sup>84</sup> NR-INQ-02

## 5. PUBLIC SECTOR EQUALITY DUTY

### SOM 10 Any other matters which may be raised at the Inquiry

#### The Case for the Applicant, Network Rail

- 5.1 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")<sup>85</sup> has been met. NR has considered equalities issues at each stage of the process, as confirmed in its Strategy.
- 5.2 NR's DIA is a systematic assessment of the likely or actual effects of policies or proposals on social groups with the protected characteristics (as defined by the Equality Act 2010). The assessment does this by:
- Reviewing whether one or more of these groups could experience disproportionate effects (over and above the effects likely to be experienced by the rest of the population) as a result of the policy of development being implemented. It includes looking at both positive and negative effects.
  - Identifying opportunities to promote equality more effectively or to a greater extent.
  - Developing ways in which any disproportionate negative impacts could be removed or mitigated to prevent any unlawful discrimination and minimise inequality of outcomes.
- 5.3 The methodology followed was a brief review of existing policy and strategy around UK equality, the transport system and NR's equality policy. High level desk research was undertaken to explore relevant aspects of the proposals in relation to the challenges faced by people with protected characteristics. The main issues identified included level crossing safety, accessibility, rurality, and severance.
- 5.4 Socio-demographic mapping focused on the population density of particular groups with protected characteristics to provide a spatial assessment of the study areas in terms of equality. This aggregates the population density of different groups to a one kilometre resolution grid, then colours each grid square, creating a visual impact assessment of 'hotspots'<sup>86</sup>. This allowed understanding of the composition of the local population surrounding each level crossing and the extent to which equality and diversity was likely to be an issue in that area.
- 5.5 The DIA Scoping Report was a preliminary assessment of the likely impact that closure of level crossing may have on their surrounding communities. This assessed whether DIAs would be necessary to lawfully assess each of the individual level crossing closures and downgrades proposed. MM also produced an "Equality and Diversity Overview" report in response to updated site proposals<sup>87</sup>.

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<sup>85</sup> S 149 Equality Act 2010

<sup>86</sup> NR-INQ-18, Scoping Report, Figure 4.4 Equality hotspot map for Cambridgeshire

<sup>87</sup> February 2017

- 5.6 Following this, NR carried out DIAs for three of the proposals:
- (i) C07 – No. 37;
  - (ii) C28 Black Horse Drove; and,
  - (iii) C31 Littleport Station.
- 5.7 The duty to “have regard”, in section 149 rests with the decision-maker in this context, i.e. the Secretary of State. Doubtless in discharging that duty the Secretary of State would have regard to the totality of the evidence including, for example, the concerns about the provision of stepped access.
- 5.8 So far as other parties suggest that there are other factors which should have been considered, they have made those points in the Inquiry. Those would be considered by the Secretary of State in having regard to the issue. NR rejects the criticisms of its DIA process and has responded to the Ramblers’ position with a note from suitably qualified experts.

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 5.9 The CCC Senior Public Health Manager of Environment and Planning provided evidence to the Inquiry<sup>88</sup>. His role is to give public health input into all environmental aspects for CCC, primarily focusing on the wider determinants of health, including transport (Active Travel) and associated health conditions.
- 5.10 In relation to the potential public health impact(s) of closing the crossings on the community living near or using the crossings, and on visitors, there was a literature review of the evidence on walking and cycling in relation to the type of routes involved. Comparison of each proposed closure with the surrounding locality looked at the possible public health consequences of that closure and the associated diversion(s), particularly access to community facilities, bus stops and open space and community severance.
- 5.11 There is well documented research about the barriers/enablers of walking/cycling particularly for active/utilitarian travel, although less for recreational/leisure use. The safety of pedestrians near level crossings is well documented but there appears to be nothing in terms of how this may influence use patterns. There is evidence on the use of linear/circular routes, but which type is chosen depends on personal preference/human behaviour.
- 5.12 There is evidence supporting the premise that walking and cycling can have positive effects on mental wellbeing. There is stronger evidence that physical activity positively affects mental health and therefore a conclusion could be drawn that walking and cycling (as forms of physical activity) will also have positive effects on mental health.
- 5.13 In relation to existence of a local heartbeat group, closure might cause an established group to cease, or to find a different route. The proposed diversion(s) might not be suitable for particular users and may affect walkers continued use of that path/route, which is linked to "habit formation", whereby habits can take 6-18 months to form, so if a closure disrupts an existing pattern of behaviour the reestablishment of the behaviour may not re-establish or may take months to adjust and form a new habit i.e. finding another route.
- 5.14 In the Local Examination of the Fenland Local Plan<sup>89</sup>, CCC successfully argued that a policy requiring a Health Impact Assessment ("HIA") to be submitted to support major development was justified locally and necessary. The health outcomes in the Fenland District Council area, where a number of the proposed closures are located are of concern because they are poor when compared to Cambridgeshire, the East of England and national averages:
- Fenland has relatively lower life expectancy and higher death rates;

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<sup>88</sup> OBJ-12, Proofs of Evidence, W13

<sup>89</sup> October 2014

- Levels of disability and general ill-health are higher;
  - The general practice recorded prevalence of specific long-term conditions like diabetes and cancer appear to be higher in Cambridgeshire than nationally, with Fenland tending to have the highest prevalence rates for many diseases;
  - The prevalence of depression is higher in Fenland and Huntingdonshire;
  - Fenland has a similar level to that found nationally for levels of overweight children. Children's activity levels tend to decrease as they get older.
  - Almost two-thirds of Cambridgeshire adults are overweight, with higher levels than nationally in East Cambridgeshire, Fenland and Huntingdonshire. A quarter are physically inactive, with the lowest activity levels in Fenland.
- 5.15 The effect of closures to PROW in the Fenland area are likely to be disproportionate compared to the rest of the county. Fenland has less PROW per km compared to the rest of Cambridgeshire<sup>90</sup>.
- 5.16 NR's Scoping Report methodology may miss those with protected characteristics due to using "hotspots". If a protected characteristic was identified as having possible adverse impacts at the screening stage it should trigger a wider/full DIA but this only occurred if a "hotspot" was identified i.e. more than one protected characteristic and within 5km.
- 5.17 The 5km radius may be considered small particularly in rural areas with sparse settlement patterns. There may be disproportionate effects on groups which find local open green space inaccessible or harder to reach due to crossing closures. The closures may be part of routes which enable adults (19-64 years old) to achieve the UK Chief Medical Officer (CMO) recommended guidelines of at least 150 minutes of physical activity per week. 5km may not take into account other users such as off-road motorcycle riders, who are likely to travel in excess of a 5 km starting point as part of their journey, although individual users may not have a protected characteristic.
- 5.18 The identified barriers which can lead to community severance are:
- Physical barriers – such as the introduction of new or removal of existing infrastructure;
  - Psychological or perceived barriers – such as traffic noise or road safety fears;
  - Social barriers – such as the disruption of 'neighbourhood lifestyle' or inhibition of social interaction.

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<sup>90</sup> Fenland has 0.63 PROW per km<sup>2</sup> compared to 1.5 across Cambridgeshire as a whole.

- 5.19 The assessment tables<sup>91</sup> do not scope in these barriers and therefore may not be included in the full DIAs, e.g. a diversion from a footpath to a road may be perceived as a barrier thus creating community severance. The section acknowledges that some social groups are more vulnerable to the effects of community severance including people with restricted mobility; older and disabled people, and school children (younger people). Older people are more at risk of social isolation which can be compounded by transport barriers. The effects of community severance can have a disproportionate effect on disabled people, who experience higher rates of social exclusion and barriers to transport. Therefore, these groups should have been specifically included as part of the DIA scoping and the impacts on them considered for each crossing closure.
- 5.20 Where possible the DIA should have used local data e.g. the Cambridgeshire Transport and Health Joint Strategic Needs Assessment. In addition, the DIA should have considered data on the health of the population in question particularly as it refers to "long term medical conditions" under the Disability Protected Characteristic.
- 5.21 The assessment did not mention the impacts of the local housing growth. Some of the proposed crossing closures are near to proposed areas for new housing, specifically the Waterbeach development, Ely North and Hauxton. Some of the PROW may be used more frequently when these sites are complete and the network of PROW surrounding these sites may become integral to the development.
- 5.22 Some crossings were stated to be "rarely used" but this needs to be understood in the context of a rural environment whereby the crossing may only be used by a few people but may be the only leisure route in the vicinity. This would therefore form an important local asset and rarely used should not be confused with unimportant.
- 5.23 Comments on specific routes are included in the relevant sections where appropriate, relating to:
- C04 – No Name number 20 (Meldreth)
  - C07 – No Name number 37 (Harston)
  - C20 – Leonards (Soham)
  - C25 – Clayway (Littleport)
  - C28 – Black Horse Drove (Littleport)

## **Ramblers Association (O26)**

### **Diversity impact assessments**

- 5.24 NR provided the Scoping Report, Equality and Diversity Report and three DIAs following a request made by the Inspector during the Inquiry. The Secretary of State is under an obligation to carry out his PSED under section 149 of the Equality Act 2010 (the 2010 Act) when determining

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<sup>91</sup> NR-INQ-18, Diversity Impact Assessment – Scoping Report RPT018 Revision D August 2016, page 145 onwards



whether or not to make the Order. He is a "public authority" as defined by section 150 and Schedule 19, para 1 of the 2010 Act.

- 5.25 NR appear to have assumed that the Secretary of State could, or would, be satisfied that his PSED had been met, simply by relying on NR's assurances that it had carried out a proper DIA process in order to comply with its own PSED. These assurances were provided, in large part, through Ms Tilbrook's evidence<sup>92</sup>.
- 5.26 The Secretary of State's PSED is separate and distinct from NR's PSED and both must be satisfied. It is accepted that he may draw from NR's assessments, as part of the evidence base on which he relies on in order to discharge his duty, but case-law has made it clear that PSEDs are non-delegable, see per Aikens LJ in *R (Brown) v SSWP [2008] EWHC 3158 (Admin)* at [94]:
- "Fourthly, the duty imposed on public authorities that are subject to the section 49A(1) duty is a non-delegable duty. The duty will always remain on the public authority charged with it. In practice another body may actually carry out practical steps to fulfil a policy stated by a public authority that is charged with the section 49A(1) duty. In those circumstances the duty to have "due regard" to the needs identified will only be fulfilled by the relevant public authority if (i) it appoints a third party that is capable of fulfilling the "due regard" duty and is willing to do so; and (ii) the public authority maintains a proper supervision over the third party to ensure it carries out its "due regard" duty..."*
- 5.27 Following *Brown*, it would be impossible for the Secretary of State to "maintain a proper supervision" over NR in a manner that could ensure the "due regard" duty has been carried out, had the DIA documentation not been disclosed to the Inquiry.
- 5.28 The PSED is not a question of "ticking boxes"; it is a duty of substance, requiring a "conscious approach and state of mind" and "exercised in substance, with rigour and with an open mind"<sup>93</sup>. This emphasises the need for the Secretary of State to be satisfied, having regard to an appropriate evidence base (which must, in this case, include the DIA documentation), that his PSED has been discharged.
- 5.29 Having now had an opportunity to consider the DIA documentation there are two key concerns with its content<sup>94</sup>.
- 5.30 Section 3 of the Scoping Report and section 2 of the Equality and Diversity Overview Report<sup>95</sup> address the "at risk groups" and identify the "potential issues associated with level crossing closures and the groups likely to be affected by those issues". This led to a scoping of the groups with relevant protected characteristics that might be

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<sup>92</sup> NR-32-1, Proof of Evidence, section 1.16

<sup>93</sup> *Haque v Hackney LBC [2017] PTSR 769* per Briggs LJ at [22], providing a useful summary of previous case law

<sup>94</sup> The concern regarding evidence relating to C07, N0. 37 is dealt with in that section of the report, 7.3

<sup>95</sup> NR-INQ-18

affected by the proposals and what the potential impacts would be<sup>96</sup>. It is apparent, from reviewing the "DIA scoping analysis" tables<sup>97</sup> that this initial assessment of "at risk groups" helped frame the crossing-specific assessments of whether there were potential impacts on persons with protected characteristics. The assessment led to a decision as to whether a crossing-specific DIA was required.

- 5.31 These sections deal with "user safety" of the level crossings<sup>98</sup> and how associated safety risks at level crossings can disproportionately affect people with particular protected characteristics. However, there has been inadequate consideration of the safety risks associated with roadside walking in relation to NR's proposed alternative routes that will direct users alongside or across roads.
- 5.32 The Ramblers recognise that some of the general impacts on safety associated with roadside walking have been considered for C11 Furlong Drive<sup>99</sup> but remain concerned that there has been no scoping assessment as to how that can disproportionately affect people with protected characteristics (in particular, people with disabilities and younger or older people). The potential impacts of roadside walking on persons with protected characteristics have not been adequately assessed.
- 5.33 The relevance of safety issues in relation to roadside walking is clear when reviewing the "Step 4: Consultation" section of the DIA for C07-No. 37. The majority of responses concerned road-user safety<sup>100</sup>.
- 5.34 It is accepted that the duty to have "due regard" is a duty to have "the regard that is appropriate in all the circumstances"<sup>101</sup> and that DIAs should not be unduly burdensome on public authorities but should rely on a proportionate evidence base. However, NR could have requested information on users' protected characteristics to allow a better understanding of the users of the crossing. The surveys for round one of the public consultations asked whether users use the crossing by means of a wheelchair or mobility aid but failed to ask, more generally, about users' protected characteristics<sup>102</sup>.
- 5.35 The Ramblers are concerned that the DIAs lack sufficient information on the numbers, or proportion, of people with protected characteristics who use the crossing under consideration. This lack of crossing-specific information undermines the DIA assessments.

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<sup>96</sup> Table 3.1 (p. 11) of the Scoping Report and Table 2 (p.10) of the Equality and Diversity Overview Report

<sup>97</sup> p. 145 et seq of the Scoping Report and p. 22 of the Equality and Diversity Overview Report.

<sup>98</sup> Scoping Report at 3.1.1 and Equality and Diversity Overview Report at 2.2.

<sup>99</sup> Equality and Diversity Overview Report, p. 26

<sup>100</sup> The DIA for this route is considered further in the relevant section.

<sup>101</sup> *Baker and others v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)* [2008] EWCA Civ 141 at [31].

<sup>102</sup> NR05, c.2 and c.3. The private user questionnaire asks about some protected characteristics, in relation to potential difficulties in reading/observing/understanding signs/lights (NR05, B, p.2) but this does not ask, more generally, about the presence of protected characteristics.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 5.36 NR were satisfied as to the execution of their PSED [5.1] and it is not the role of the Secretary of State to determine whether or not NR discharged their own PSED. However, the Secretary of State, as the decision-maker, is under an obligation to be satisfied as to the execution of his own duty under the 2010 Act [5.3, 5.24 – 5.26].
- 5.37 Section 149(1) of the 2010 Act requires that a public authority or person exercising a public function must, in the exercise of its functions, have due regard to the need to:
- “(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”
- 5.38 Section 149(3) explains that having regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- “(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”
- 5.39 DIA is a systematic assessment of the likely or actual effects of policies or proposals on social groups with the following protected characteristics<sup>103</sup> (as defined by the 2010 Act):
- Age, including children aged under 16, younger people aged 16-24, and older people aged 65 and over;
  - Disability, including people with sensory impairments, mobility impairments, learning disabilities, mental wellbeing disabilities, and long-term medical conditions;

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<sup>103</sup> Scoping Report, NR-INQ-18

- Gender reassignment, including persons who are proposing to undergo, are undergoing, or have undergone gender reassignment;
- Marriage and civil partnership, with a focus purely on discrimination on the basis of whether someone is married or in a civil partnership – single people are not covered by this characteristic;
- Pregnancy and maternity, including pregnant women and nursing mothers;
- Race and ethnicity, including ethnic or national origins, colour or nationality;
- Religion or belief, including all religion, faith or belief groups, including lack of belief;
- Sex, including both women and men
- Sexual orientation, including heterosexuals, as well as lesbians, gay men and bisexual people.

5.40 Having 'due regard' involves: "*consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by public bodies.*" The PSED is not a positive duty to eliminate discrimination, advance opportunity or foster good relations. It should ensure that decisions which may impact on equality are taken from an informed position. *R. (on the application of Brown) v SofS for Work & Pensions* [2008] EWHC 3158 (Admin) established clear principles to be applied in assessing whether 'due regard' had been had in any particular case [5.26]. The provision of the NR information was of assistance in relation to my PSED [5.35] and I was assisted by the review undertaken by the CCC Senior Public Health Manager [5.9].

5.41 In providing advice to the Secretary of State on the proposals, I have had due regard to the totality of the evidence. This has included the DIA Scoping Report and individual DIAs [5.1 – 5.6]; the information from CCC on both a general and specific basis [5.9 – 5.23]; taking note of the matters of concern to the Ramblers [5.30 – 5.35]; as well as individual evidence, whether or not that was expressed by reference to the PSED, for example, information from the Heartbeat Health Walks group on C25, Clayway [7.13]; and taking account that physical barriers may include making a route longer than previously [5.18].

5.42 The concern regarding the Fenland DC area is noted [5.14] but assessments must relate to the potential impacts on persons with protected characteristics. It is noted that a HIA may be appropriate in relation to a major scheme carried out in this area. This is a separate matter to DIA, although there is some cross-over, for example in relation to long-term medical conditions.

5.43 For each crossing I have provided a recommendation as to whether the proposed alternative route is suitable and convenient in comparison with the existing level crossing route. In so doing I have had due regard to the

three aims of the PSED. For some crossings, therefore, I have expressly addressed the impacts of the proposal on persons with the relevant protected characteristics, and weighed my findings on those impacts in the overall balance. This includes, for example, the improvements that may arise for some of those with protected characteristics who would be removed from sharing space with trains on the crossings. Where there is no discrete section on the PSED this is because there was no claim or evidence that including the crossing proposal in the Order could mean that the PSED would not be met.

## 6. PLANNING AND POLICY MATTERS

### **SOM 3 The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies**

#### **The Case for the Applicant, Network Rail<sup>104</sup>**

6.1 The Guide to TWA Procedures (DfT, 2006) states:

*"1.28 In determining an application for a TWA order to authorise works, and any related application for deemed planning permission, the Secretary of State will have regard to, amongst other things, relevant national, regional and local planning policies. Therefore, in drawing up works proposals, prospective applicants should pay particular attention to relevant national policy guidance and development plan policies, including those in regional spatial strategies and local development documents. In line with the plan led system for determining planning applications, projects that conflict with relevant policies in the development plan are unlikely to be authorised, unless material considerations indicate otherwise.*

*1.29 Prospective applicants are advised to consult the local planning authorities and other statutory and non-statutory organisations with relevant responsibilities and expertise at the formative stage of a project. They should seek to work with the local authorities and other key consultees in taking forward their project – see Part 2 for more detailed advice on pre-application consultation."*

- 6.2 NR has considered the planning policy framework for the Order throughout the scheme development process. It consulted with the local planning authorities, none of whom objected to the Order. NR is satisfied that the proposals are consistent with the NPPF, national transport policy, and local transport, environmental and planning policies for the reasons set out below.
- 6.3 The physical works required to close or downgrade the level crossings and to achieve the diversions are minimal and a summary of these works for each crossing is provided in the Design Guide<sup>105</sup>. Pursuant to Rule 10(6) of the 2006 Rules, the application is accompanied by a request for a Direction under Section 90(2A) of the TCPA<sup>106</sup>. If given, the Direction would grant deemed planning permission, so far as it is required, for the development sought to be authorised by the Order, subject to any conditions.
- 6.4 Those elements of the proposals requiring deemed planning consent are the works authorised by the Order and particularised in Schedule 1 to the Order. These comprise 8 footbridges and one bridleway bridge. The project also authorises the stopping up, diversion and creation of rights of way. Whilst those powers do not themselves relate to works requiring planning permission, there are planning policies which are likely to be relevant to the Order.

<sup>104</sup> NR-INQ-32, NR Note 15 – Planning Policy Note

<sup>105</sup> NR-12

<sup>106</sup> NR-INQ-33, Rule 10(6) Request for Planning Permission, see Section 12 of this Report

- 6.5 The routes fall within the areas of three district councils, all statutory consultees listed in Schedules 5 and 6 of the 2006 Rules. The table below lists the relevant districts and the crossings within their administrative boundaries.

District Council	Level Crossings
Fenland District Council	C12, C14, C15
East Cambridgeshire District Council	C02, C10, C11, C16, C17, C20, C21, C22, C24, C25, C26, C27, C28, C29, C30, C31
South Cambridgeshire District Council	C01, C04, C07, C33, C34, C35

- 6.6 CCC is a non-metropolitan county council and, as the local highway authority, is a statutory consultee for the purposes of the 2006 Rules. Pre-application consultation was carried out with the local planning authorities and CCC since summer 2014<sup>107</sup>. Workshops and telephone conferences were held jointly with the county and district councils to discuss the principles and details of the proposals.
- 6.7 The Local Planning Authorities (LPAs) were provided with the Environmental Impact Assessment (EIA) Screening Request as required. No objection letters, Statements of Case, or Evidence has been received from East or South Cambridgeshire DCs in regard to the proposals. Objection 28 from Fenland DC raised objection to C13, Middle Drove, due to the impact on refuse collection services. C13 has been removed from the Order and the objection withdrawn.
- 6.8 In May 2016 NR wrote to LPAs updating them on the proposals and asking for information on land allocations and development proposals in close proximity to the crossings. Responses were received from Fenland and South Cambridgeshire DCs. The project team, through landowner, public and strategic consultation, have developed further knowledge of consented, proposed and aspired development in the vicinity of the level crossings within the Order. This has been used to help develop and appraise the proposals.

### **The Development Plan**

#### ***Fenland District Council***

- 6.9 The development plan for Fenland DC's area comprises the Fenland Local Plan (2014) and the Cambridgeshire and Peterborough Minerals and Waste Plan (2011) ("CPMWP"). There are no relevant policies in the CPMWP. The Fenland Local Plan, adopted May 2014, includes the following relevant policies.
- Policy LP1 – Presumption in Favour of Sustainable Development
  - Policy LP2 – Facilitating Health and Wellbeing of Fenland Residents

<sup>107</sup> NR05, part 3.3.1

- Policy LP12 – Rural Area Development Policy
- Policy LP15 – Facilitating the Creation of a More Sustainable Transport Network in Fenland
- Policy LP16 – Delivering and Protecting High Quality Environments Across the District
- Policy LP17 – Community Safety
- Policy LP18 – The Historic Environment
- Policy LP19 – The Natural Environment

### ***East Cambridgeshire District Council***

6.10 The development plan for East Cambridgeshire DC’s area comprises the Local Plan (2015) and CPMWP. The Council is currently preparing and consulting on a new Local Plan for East Cambridgeshire<sup>108</sup>. Relevant policies of the Local Plan 2015 are:

- Policy GROWTH 3: Infrastructure requirements
- Policy GROWTH 5: Presumption in favour of sustainable development
- Policy ENV 1: Landscape and settlement character
- Policy ENV 7: Biodiversity and geology
- Policy ENV 14: Sites of archaeological interest
- Policy COM 5: Strategic green infrastructure
- Policy COM 7: Transport impact

### ***South Cambridgeshire District Council***

6.11 The development plan for South Cambridgeshire DC’s area comprises the Core Strategy DPD (2007), Development Control Policies DPD (2007), the Site-Specific Policies DPD (2007), various Area Action Plans, and the CPMWP. The South Cambridgeshire Local Plan was submitted to the Secretary of State on 28 March 2014 for examination, alongside the Cambridge Local Plan and, at time of writing, was yet to be adopted<sup>109</sup>.

6.12 The Core Strategy DPD sets out a strategic vision for the District which includes the following objectives:

- “ST/b To locate development where access to day-to-day needs for employment, shopping, education, recreation, and other services is available by public transport, walking and cycling thus reducing the need to travel, particularly by private car.
- ST/c To create new and distinctive sustainable communities on the edge of Cambridge connected to the rest of the city by high quality

<sup>108</sup> East Cambridgeshire District Council formally withdrew the emerging Local Plan on 21 February 2019

<sup>109</sup> The South Cambridgeshire Local Plan was adopted by South Cambridgeshire DC on 27 September 2018



public transport and other non-motorised modes of transport which will enhance the special character of the city and its setting.”

6.13 The Development Control Policies DPD contains the following policies relevant to the proposals:

- Policy DP/3 Development Criteria
- Policy TR/4 Non-motorised modes

6.14 The Waterbeach new town allocation<sup>110</sup> is in the (emerging) Local Plan.

### **Other material considerations**

#### ***The NPPF***

6.15 On 24 July 2018, the Government published a revised NPPF<sup>111</sup>. This provides at Annex 1: Implementation, that “*The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication.*”<sup>112</sup>

6.16 NR was satisfied that its proposals were consistent with the revised NPPF, as they were with the 2012 NPPF, and that there are no substantive changes of relevance to this application.

6.17 Although the list of 12 core planning principles in the 2012 NPPF has been removed from the revision, the principles remain applicable, and are set out in the relevant chapters of the NPPF.

6.18 Sustainable development should be achieved through three overarching objectives:

- a) an economic objective – to help build a strong, responsive and competitive economy, including by identifying and coordinating the provision of infrastructure;
- b) a social objective – to support strong, vibrant and healthy communities, including by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and
- c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

6.19 The proposed Order scheme would contribute to each of these objectives, which are consistent with the strategic case, including its safety case

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<sup>110</sup> Referred to in relation to C35, Ballast Pit

<sup>111</sup> A further revision was published on 19 February 2019

<sup>112</sup> Interested parties were provided an opportunity to comment on the revised 2018 NPPF

and the removal of constraints on the operation and enhancement of the railway network for the provision of public transport services.

- 6.20 The promotion of sustainable transport requires local authorities to plan for the use of sustainable modes of transport. Paragraph 102 provides that transport issues should be considered from the earliest stages of plan-making and development proposals, so that:
- a) the potential impacts of development on transport networks can be addressed;
  - b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised ...and
  - c) opportunities to promote walking, cycling and public transport use are identified and pursued.
- 6.21 Paragraph 110 provides that applications for development should:
- a) give priority first to pedestrian and cycle movements...and second – so far as possible – to facilitating access to high quality public transport;
  - c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
- 6.22 The strategic case for the proposal is consistent with the principles expressed in the NPPF. In particular, high quality public transport would be better realised by the removal of the level crossings.

#### Promoting healthy and safe communities

- 6.23 NPPF Chapter 8 addresses safe and accessible development as well as clear and legible pedestrian routes and high-quality public space. Paragraph 98 states that planning decisions should protect and enhance PROW and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

#### Design

- 6.24 Paragraph 124 of the NPPF provides that good design is a key aspect of sustainable development, creating better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So is effective engagement between applicants, communities, local planning authorities and other interests throughout the process. Principles of good design are also enshrined in the relevant development control policies in respect of each local planning authority's area.

- 6.25 The works promoted by the Order and deemed planning consent are minor in nature and commonplace within the rural setting (public right of way finger posts, public right of way foot and bridleway bridges over local drains and ditches, unsurfaced field margin footpaths etc.) The Order requires the design of these features to be agreed with the relevant authorities using best practice design for visual appearance. An agreement was reached with the County Council to manage the process and ongoing maintenance liability.

#### Biodiversity

- 6.26 Chapter 15 of the NPPF is concerned with conserving and enhancing the natural environment. Similar policies are found in each of the relevant development plans. NR has carried out an extensive programme of environmental surveys to understand local constraints and inform scheme development. Diversion routes have been amended to avoid protected species<sup>113</sup> and the use of existing gaps in hedges / watercourse crossing points would be used wherever possible. A Precautionary Method of Works (PMW) has been produced and agreed with the local planning authorities. The implementation of the processes and measures set out in the PMW is proposed to be controlled by planning condition.

#### Historic environment

- 6.27 The NPPF, in particular, paragraph 184 provides that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. There are similar heritage related policies in the relevant local plans.
- 6.28 Through consultation with the County Archaeologist and Local Planning Authorities, a study was undertaken of the potential for archaeological findings at each level crossing. Subsequently a crossing specific condition has been agreed with the County Archaeologist and Local Planning Authorities to ensure that local and national policy requirements are satisfied.

#### **NPSNN**

- 6.29 The NPSNN relates to Nationally Significant Infrastructure Projects but contains policy relevant to this Order:

"2.2 There is a critical need to improve the national networks to address... crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth...

2.9 Broader environment, safety and accessibility goals will also generate requirements for development. In particular, development will be needed to address safety problems, enhance the environment or enhance accessibility for non-motorised users. In their current state, without development, the national networks will act as a

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<sup>113</sup> For example, C15, Brickyard Drove

constraint to sustainable economic growth, quality of life and wider environmental objectives.

2.10 The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. ...

2.29 In the context of the Government’s vision for the transport system as a driver of economic growth and social development, the railway must:

- offer a safe and reliable route to work;
- facilitate increases in both business and leisure travel;
- support regional and local public transport to connect communities with public services, with workplaces and with each other; and
- provide for the transport of freight across the country, and to and from ports, in order to help meet environmental goals and improve quality of life...

3.12 It is the Government’s policy, supported by legislation, to ensure that the risks of passenger and workforce accidents are reduced so far as reasonably practicable. Rail schemes should take account of this and seek to further improve safety where the opportunity exists and where there is value for money in doing so by focussing domestic efforts on the achievement of the European Common Safety Targets.”

### ***Cambridgeshire County Council Policy***

6.30 CCC, as the local highways authority, is responsible for keeping the DMS up to date and developing Rights of Way Improvement Plans. CCC’s policies do not form part of the statutory development plan but may be material considerations. Key policy documents include:

- Local Transport Plan 3 (2011-2031)<sup>114</sup>
- Rights of Way Improvement Plan (ROWIP) (2006 and 2016 update)<sup>115</sup>
- Cambridge City and South Cambridgeshire Transport Strategy (2014)
- Transport Strategy for East Cambridgeshire (2016)
- Transport Delivery Plan (2015)
- Highway Asset Management docs (Feb 2017)
  - Highway Asset Management Policy
  - Highway Asset Management Strategy
  - Highway Infrastructure Asset Management Plan

<sup>114</sup> CCC16

<sup>115</sup> CCC17

### **Planning Policy Assessment**

#### Principle of the level crossing closures

- 6.31 The evidence of Mark Brunnen<sup>116</sup> and Eliane Algaard<sup>117</sup> considers the purposes of the Order and reasons for seeking to close or downgrade level crossings.
- 6.32 In terms of safety for level crossings users and rail users, national and local planning policy supports the provision of safe transport networks (including the railway and NMUs):
- a. NPPF supports accessibility for pedestrians and cyclists;
  - b. Providing a safe railway is a key objective of the NPSNN;
  - c. Fenland Policy LP2 supports the provision of "safe transport networks" and LP17 seeks a footpath network which is "safe to use";
  - d. East Cambridgeshire Policy ENV 2 and South Cambridgeshire Policy DP/3 contain similar support for safe access for pedestrians and other users.
- 6.33 In terms of improving the operational efficiency of the railway, and enabling future enhancements to the rail network, national and local planning policy supports the Order. The provisions of the development plan which are of note are:
- a. Fenland Policy LP15 which expressly supports enhanced rail travel, and the movement of freight by rail;
  - b. East Cambridgeshire Policy GROWTH 3 which supports the provision of improved rail services;
  - c. South Cambridgeshire strategic objective ST/c which supports the provision of high-quality public transport to serve new developments.
- 6.34 In terms of the CCC transport policies, CCC acknowledges that the 'underlying principles of the Anglia Level Crossing Reduction are broadly in line with CCC's Local Transport Plan (LTP) and Long Term Transport Strategy (LTTs) objectives'.
- 6.35 The overall objectives of the Order scheme therefore accord with the development plan and other material considerations.

### **Impact on rights of way network and provision of alternative routes**

- 6.36 National and local planning policy support the protection and enhancement of the rights of way network:

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<sup>116</sup> NR27

<sup>117</sup> NR28

- a. The NPPF seeks to protect and enhance PROW (paragraph 98);
- b. Fenland Policy LP15 seeks to deliver “robust networks and facilities for walking and cycling, which are suitably linked and integrated into the wider transport network, are well maintained and promoted, and which help facilitate other schemes such as Safe Routes to Schools and travel plans” and “Prioritise schemes which complete gaps in the network, especially those that will encourage more local walking and cycling journeys”. Policy LP17 seeks to achieve a “convenient footpath network”;
- c. East Cambridgeshire Policy COM7 provides that new development should “protect existing rights of way or allow for agreed diversions in exceptional circumstances”;
- d. South Cambridgeshire Policy TR/4 states that planning decisions “will need to consider the effect of proposed development on the effectiveness and amenity of these routes and take account of the need to extend or improve the attractiveness of the network, including through improved maintenance, crossings, signposting and waymarking of cycleways, footpaths and other rights of way. Where appropriate the DC will negotiate with the relevant landowners and organisations to extend, or where necessary amend, the network of public rights of way including circular routes.”

6.37 The evidence of Sue Tilbrook<sup>118</sup> addressed how the provision of alternative routes seeks to protect the rights of way network as a whole and provide enhancements where possible, focusing on the provision of convenient and suitable alternatives to the routes which would be affected by level crossing closures. That approach (as endorsed by the Guide to TWA Procedures, and subject to other submissions) accords with relevant planning policy.

### ***Policies relevant to authorised works***

#### Construction

6.38 Development plan policies do not routinely address construction impacts which are generally controlled by environmental health regimes. NR contractors are required to comply with NR’s Contract Requirements Environment (CR-E) document NR/L2/ENV/015 Issue 6 (2011). All construction work would be carried out in accordance with the standard principles outlined in the CR-E<sup>119</sup>. In addition, a Construction Environmental Management Plan (CEMP) would be prepared and implemented by contractor and agreed with the LPA. The CEMP would be aligned to the principles in CR-E, setting out the general environmental management principles, including measures to manage and reduce impacts on air quality, biodiversity, cultural heritage, land quality, noise and vibration, surface water and groundwater, traffic and transport and waste and materials.

<sup>118</sup> NR32

<sup>119</sup> Appendix D of the EIA Screening submission (not before the Inquiry – see NR11)

### Environmental Impact Assessment Screening

- 6.39 An EIA Screening opinion was submitted to the DfT on the 9 December 2016. The response received on the 24 January 2017<sup>120</sup> confirmed that no EIA was required.

### Planning Conditions

- 6.40 As part of the submission documents<sup>121</sup> NR suggested conditions in regard to ecology, archaeology, landscaping, and design approval of footbridges. The need for such conditions is accepted and the wording has been the subject of further discussion with CCC and the LPAs and is now agreed. These conditions give assurance that the control and mitigation measures set out in the various submissions would be implemented in full.
- 6.41 They meet the policy tests since they are directly related to the works comprised in the implementation of the Order; necessary to ensure that those works are carried out in a manner which minimises any adverse impacts and secures policy compliance; and are otherwise reasonable.

### **Conclusion**

- 6.42 The proposed works, which form part of this application, would result in improvements to the safety of users of level crossings and the operational railway. Connectivity would be maintained through the provision of upgrades and new additions to the surrounding public right of way network. Local and national planning policy has been considered through the scheme development process and the proposals comply with the NPPF and policies set out within the adopted Local Plans and transport plans.
- 6.43 NR submits that the Inspector should report that the proposals are consistent with the NPPF, national transport policy, and local transport, environmental and planning policies because they further public safety, improve the operational efficiency of the railway, and assist in the delivery of future enhancements to the railway. In so doing, they promote sustainable transport and economic growth. The PROW diversions do not have a material adverse effect on the rights of way network and therefore are acceptable in terms of those policies. The operational development authorised by the Order is modest and consistent with local and national planning policies. The planning conditions assist in securing compliance with other relevant policies in respect of design, ecology and heritage matters.

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<sup>120</sup> NR11

<sup>121</sup> NR10

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 6.44 CCC considers that the NPPF is relevant to both its strategic case and its objections to specific crossing proposals made to the Order.
- 6.45 The NPPF is supportive of the strategic policy with regard to PROW and related planning and health comments that CCC made as part of the original proposal and Inquiry. Paragraph 91 of the NPPF states:
- "Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:*
- a) *promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;*
  - b) *are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and*
  - c) *enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling."*
- 6.46 'c' above is particularly relevant to the crossings in Fenland as an area of identified health need<sup>122</sup>.
- 6.47 Paragraph 92 states: To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:
- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
  - c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
- 6.48 Paragraph 98 states : Planning policies and decisions should protect and enhance PROW and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails. They should not diminish them. The TWAO proposals to which CCC still objects would contradict the NPPF

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<sup>122</sup> OBJ-12, Proof of Evidence W13



paragraphs 91, 92 and 98, particularly in the Fenland area<sup>123</sup>, but also in the other areas. This is because the alternative routes proposed for the nine locations to which CCC objects are inadequate and would discourage the use for which the paths affected are currently used, which is primarily health and recreational purposes (with their physical and mental health benefits), and community cohesion.

6.49 Paragraph 104 is also relevant: Planning policies should:

- d) provide for high quality walking and cycling networks and supporting facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

6.50 In CCC's view, the guidance highlighted above from the NPPF supports the CCC's Statements of Action in its ROWIP, adopted as policy in 2006, and the key Priorities set out in the Cambridgeshire Health & Well Being Strategy ('the CHWBS')<sup>124</sup>, and the Joint Needs Assessment Strategy ('JNAS').

6.51 CCC's Business Plan 2017-18<sup>125</sup> sets out the Authority's strategic vision for the county of Cambridgeshire. The Strategic Priorities are:

- Developing the local economy for the benefit of all
- Helping people live healthy and independent lives
- Supporting and protecting vulnerable people

6.52 Following on from these, CCC's Strategic Outcomes are that:

- Older people live well independently
- People with disabilities live well independently
- People at risk of harm are kept safe
- People lead a healthy lifestyle
- Children and young people reach their potential in settings and schools
- The Cambridgeshire economy prospers to the benefit of all Cambridgeshire residents
- People live in a safe environment

6.53 CCC has similar duties and responsibilities regarding the safety, accessibility and sustainability of the highway network as NR does with the rail network. The changes proposed principally, and significantly, affect the highway network for which CCC is the Highway Authority. The majority of the proposals concern PROW, with public carriageways and private roads also being affected, with associated implications for the wider highway network.

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<sup>123</sup> C14 Eastrea Cross Drove, Whittlesey FP50 and C15 Brickyard Drove, Whittlesey FP48

<sup>124</sup> CCC18

<sup>125</sup> CCC14

- 6.54 CCC's approach to the management of its highway assets, including PROW, is contained in its Highway Infrastructure Asset Management Plan ('HIAMP')<sup>126</sup>. The HIAMP refers to CCC's ROWIP, which sets out in more detail how CCC will manage and improve the PROW network. The ROWIP is a statutory requirement for all highway authorities under the Countryside and Rights of Way Act 2000 Act (2000 Act) and CCC's ROWIP was first adopted in 2006, with a revision published in 2016. The HIAMP sets out CCC's policy on adoption of Non-motorised user (NMU) routes, whether new routes or those arising through diversions under the HA80 or TCPA.
- 6.55 The ROWIP forms part of Cambridgeshire's LTP 3 and contributes towards the delivery of the Council's main outcomes set out above. The strategic objectives of the LTP are:
1. Enabling people to thrive, achieve their potential and improve quality of life
  2. Supporting and protecting vulnerable people
  3. Managing and delivering the growth and development of sustainable communities
  4. Promoting improved skills levels and economic prosperity across the county, helping people into jobs and encouraging enterprise
  5. Meeting the challenges of climate change and enhancing the natural environment
- 6.56 There are clear links between the ROWIP Statements of Action and the LTP objectives. The ROWIP has eight Statements of Action ('SOA') with accompanying 'Guiding principles' ('GPs'):
- SOA1 Making the countryside more accessible (community cohesion)  
GP1: Countryside access provision should be physically accessible to the widest possible range of people. Management and improvement of the existing Cambridgeshire Rights of Way network should aim to increase that accessibility, while new countryside access provision should generally be planned to avoid imposing restrictions. Where an existing path may not be fully accessible to those with limited mobility due to limits imposed by external constraints, such route limitations should be effectively communicated to users.
  - SOA2 A safer and health-enhancing activity  
GP2: Countryside Access provision should be safe for users and encourage healthy activities. Where significant potential conflict with motor traffic or railways can be demonstrated, then measures to reduce risk will be considered. Where rights of way are subsumed within urban development, then planners will be encouraged to ensure

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<sup>126</sup> CCC15

that path design is open and unthreatening and suitable for regular exercise. Safety-critical path infrastructure will be regularly inspected.

- SOA3 72,500 new homes

GP3: New development should not damage countryside provision, either directly or indirectly. New settlements should be integrated into the rights of way network, and improved provision made for the increased population. Where appropriate, development should contribute to the provision of new links and/or improvement of the existing rights of way network.

- SOA4 Knowing what's out there

GP4: Up to date, accurate, comprehensive and integrated access information should be made available to all users of countryside access provision.

- SOA5 Filling in the gaps

GP5: Countryside access provision should build on the platform of the historical network to meet the needs of today's users and land managers.

- SOA6 Better land management

GP6: Management and improvement of countryside access should consider the needs of land management, conservation, heritage and concern about rural crime.

- SOA7 Develop definitive map and other records

GP7: The DMS should be an accurate, comprehensive, up-to-date and accessible record of the public rights of way network in Cambridgeshire. Proposals for legal changes to the network should be resolved subject to availability of resources.

- SOA8 A better countryside environment

GP8: The countryside access experience in Cambridgeshire should be straightforward, enjoyable and inspiring.

6.57 The LTP and ROWIP work in harmony with the CHWBS 2016-17, which promotes priorities to support and improve the physical and mental health of the county's communities. The Health and Wellbeing Board comprises services across the NHS, DCs, CCC, children's and social care, and elected representatives. Maintaining and developing the PROW network supports most of the Priorities of the Strategy, the key ones relevant to the highway network being:

- Priority 2 Support older people to be independent, safe and well, which encourages older people to stay active and links to ROWIP SOA1, SOA2, SOA4, SOA5 and SOA8.
- Priority 3 Encourage healthy lifestyles and behaviours in all actions and activities while respecting people's personal choices, which promotes physical activity and also links to ROWIP SOA2, SOA3, SOA4, SOA5 and SOA8.

- Priority 4 Create a safe environment and help build strong communities, wellbeing and mental health, which recognises the strong link between physical and mental health. Rights of way and access to green space is an important, free source for people. This Priority also relates to ROWIP SOA1, SOA2, SOA3, SOA4, SOA5 and SOA8.
- Priority 5 Create a sustainable environment in which communities can flourish, which acknowledges the importance that good transport planning, green spaces and the built environment play a vital role in determining health and wellbeing, together with the benefits that these bring to the local economy. This Priority has the following three aims and links to SOA1, SOA2, SOA3, SOA5, SOA6 and SOA8:
  1. Develop and maintain effective, accessible and affordable transport links and networks, within and between communities, which ensure access to services and amenities and reduce road traffic accidents.
  2. Ensure that housing, land use planning and development strategies for new and existing communities consider the health and wellbeing impacts for residents in the short and long term.
  3. Encourage the use of green, open spaces including public rights of way, and activities such as walking and cycling through the provision of safe, continuous networks.
- Priority 6 Work together effectively explains how the different services in the County will work together to achieve these priorities through solution-building and partnership working. The Priority recognises that there are many other organisations who can contribute to achieving these goals, and NR, as custodian of one of the major transport networks, is in a pivotal position to do so. The Priority relates to SOA1, SOA2, SOA3, SOA5, SOA6, SOA7 and SOA8

6.58 Applications to CCC to change the highway network are processed under two policies:

- i) 'Public Path Order applications to divert or extinguish public footpaths and bridleways', adopted in 2010, and
- ii) 'Adoption of NMU routes' identified above.

6.59 Under the Adoption of NMU routes policy, every application is scored against a set of criteria, with the second set relating to diversions. This enables a common approach to be applied to proposals to create NMU routes, ensuring affordability for long term asset management. CCC has provided PROW guidance to planners and developers for many years, including expected boundary treatment for alternative routes. The

Guidance<sup>127</sup> for planners and developers is available on CCC's website, and the link was provided to NR early in the process.

- 6.60 The NPPF strengthens CCC's argument that the proposed TWAO will adversely impact upon the health and well-being of local communities where inadequate alternative routes are proposed to be provided, namely the proposals to which the County Council still objects<sup>128</sup>.
- 6.61 The NPPF seeks to speed up delivery of new housing and development and provide greater input from local communities into the design of new development. The principles set out above are particularly important to ensure that any new development has good green infrastructure in place to support new and existing communities.
- 6.62 The NPPF can take precedence where a DC does not have a Local Plan in place. As neither South Cambridgeshire District Council<sup>129</sup> nor East Cambridgeshire District Council have a Local Plan in place, it is especially important that the potential impact of NR's proposed TWAO in these areas is considered within the context of the NPPF. This applies to all the crossings to which CCC objects, except C14 and C15, which fall under Fenland District Council.
- 6.63 In relation to ecology CCC finds the scheme acceptable in terms of conservation of biodiversity, providing that adequate protection of ecological features of interest are secured through adequately worded conditions (previously agreed between CCC and the applicant), which accord with best practice guidance and local/national planning policies.
- 6.64 With respect to archaeology, CCC responded to the applicant's Environmental Screening Request indicating that on archaeological grounds it did not recommend an EIA, nor alterations to the locations of proposed scheme features. Mitigation would be required to ensure that the significance of historic environment assets was conserved, in line with Government guidance. CCC has requested a planning condition be included and this has been set out in section 12.
- 6.65 CCC recognises NR's strategic reasons for the proposed Order as part of its wider ALRCS, and, in accordance with CCC's Strategic Priorities set out in its Business Plan 2017-18, it supports, in principle, the ambition of increasing public safety, improving journey times, and developing the transport network to accommodate growing demand and to encourage more sustainable travel choices.
- 6.66 CCC's position is that NR must have sound justification for any diminution of the highway network on grounds of safety, efficiency and long-term impact on public health. CCC is, in principle, willing to accept the loss of some routes, where the case is proved on these grounds and where it is acceptable to communities. However, good alternative routes need to be provided that: are reasonably convenient and at least as enjoyable for users; maintain or encourage good health habits; do not

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<sup>127</sup> CCC19

<sup>128</sup> C04, C07, C11, C14, C15, C20, C21, C22 and C27

<sup>129</sup> See Footnote 109 for update

add unreasonable liability to the Highway Authority; and do not put users more at risk than on the existing routes. CCC believes there needs to be a balanced approach if the two organisations are to work in partnership towards improving both transport systems for the benefit of the public.

## **Ramblers Association (O26)**

### **Consideration of planning policy**

- 6.67 The Secretary of State has asked to be informed on the extent to which the proposals in the TWAO are consistent with the NPPF, national transport policy, and local transport, environmental and planning policies. Further, NR, as part of its application, is seeking deemed planning permission<sup>130</sup>. However, until the Inspector raised concerns that there was insufficient evidence on how the scheme complies with planning policy,<sup>131</sup> NR was seemingly willing to rely on the information provided in Dr Algaard's proof of evidence<sup>132</sup> at 2.6.12 – 2.6.19, as well as the statements made by Ms Tilbrook that the alternative routes are considered to comply with planning policy because they are suitable and convenient, as sufficient evidence that NR's scheme complies with planning policy.<sup>133</sup>
- 6.68 This is of serious concern. Neither Dr Algaard nor Ms Tilbrook are planners. The relevant section of Dr Algaard's proof merely consists of short statements as to why the Order complies with a number of selected planning policies. This is not sufficient. What is more, during questioning, Dr Algaard clearly demonstrated a railway-centric perspective in assessing the project against planning policies. She was not even aware of the recent Department for Transport's Cycling and Walking Investment Strategy (April 2017).
- 6.69 An example of NR's railway-centric approach to planning policy arose during cross-examination. When asked to explain how the proposals "assist...in actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling"<sup>134</sup>, Dr Algaard responded that if the railway network were to be improved, this would enhance the economy which would, in turn, better enable investment in walking and cycling. It is apparent that when NR considers planning policy, it does so from the perspective of NR.

### **NR's note on planning policy**

- 6.70 The Ramblers became aware on Friday 16 February 2018 that NR had submitted a 22-page note, including appendices, on planning policy considerations on Thursday 15 February. The Ramblers recognise that "NR...is satisfied that the proposals are consistent with those policies" and that the note "is intended to provide further information to support

<sup>130</sup> NR10

<sup>131</sup> Inspector's note sent on 19 January 2018.

<sup>132</sup> NR28

<sup>133</sup> Ms Tilbrook XIC, specifically in regard to compliance with Cambridgeshire's ROWIP. Reference was also made to 1.13 of Ms Tilbrook's proof and p.189 of Ms Tilbrook's appendices (which includes a blank Appraisal Summary Table Template).

<sup>134</sup> para 2.6.13 of Dr Algaard's proof

that conclusion".<sup>135</sup> However, the Ramblers would seek to highlight further relevant planning policies which the Ramblers submit are material considerations for the Inspector to consider.

- 6.71 The NPSNN, which NR quote from, must be considered as a whole. Reference should be made to para 3.1 which notes how the need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail users.
- 6.72 The Government's policy on "sustainable transport" is set out at 3.15 – 3.18 of the document, para 3.16 then provides: As part of the Government's commitment to sustainable travel it is investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking across the country.
- 6.73 The Ramblers submit that the Government's most up-to-date policy document<sup>136</sup> on the need to encourage sustainable transport is the Department for Transport's Cycling and Walking Investment Strategy 2017, which has an overarching "ambition for England" to "make cycling and walking the natural choices for shorter journeys, or as part of a longer journey".<sup>137</sup> The Ramblers query whether the Order complies with the objectives of this strategy.
- 6.74 The Ramblers wish to highlight para 5.184 of the NPSNN, which states (under the heading of 'mitigation' within the section of 'Land use including open space, green infrastructure and Green Belt'):
- Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent.
- 6.75 NR has not referred to these parts of the NPSNN. They clearly show the importance of a proper consideration of the impacts which new schemes would have on the ROW network.

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<sup>135</sup> NR-INQ-32 NR Note 15 – Planning Policy Note, para 2.

<sup>136</sup> The NPSNN is dated December 2014.

<sup>137</sup> OBJ-26-INQ-04 DfT Cycling and Walking Strategy, p.7.

- 6.76 The Ramblers see the updates to the section on sustainable transport in the NPPF<sup>138</sup> as a clear re-emphasis by the Government of the importance of sustainable modes of transport. Where suitable and convenient alternative routes have not been provided, NR's proposals would reduce the use of sustainable modes of transport in terms of walking and cycling.
- 6.77 The NPPF has added an express reference to "highway safety", which is read as a re-emphasis of the importance the Government places on ensuring new development does not inappropriately increase safety risks on the highways. Where the Ramblers have objected to alternative routes on highway safety grounds, it was not considered that NR's proposals aligned with this part of the NPPF.
- 6.78 Where the Ramblers dispute that an alternative route is "suitable and convenient", they also dispute that the proposal accords with relevant planning policy, particularly policy which is directed to the protection and enhancement of rights of way and to the encouragement of walking and cycling as sustainable modes of transport.<sup>139</sup>
- 6.79 The Ramblers is a volunteer-based organisation of walkers and rights of way users. It does not offer any evidence of planning issues for this Inquiry. However, the Ramblers submit that the Inspector must be satisfied on the basis of robust evidence that NR's strategic case for the closure of level crossings complies with planning policy if she is to recommend that the Order be made on that basis.

### **National Farmers Union (O43)**

- 6.80 One of the key areas of concern for NFU members is the potential for reduced access to farmland as a result of the proposed railway crossing closures.
- 6.81 The NPPF states that:
- Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 6.82 The NPPF also makes specific reference to supporting a prosperous rural economy, including 'the development and diversification of agricultural and other land-based rural businesses'.
- 6.83 These requirements should be borne in mind when considering the planning aspects of the proposals for the closure of railway crossings. In many cases, the proposed closures would result in increased difficulty in accessing productive farmland, which would result in significant logistic and financial implications for farm businesses. Some proposals would lead to very lengthy diversions in order to access land, which would have

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<sup>138</sup> Section 9, "Promoting Sustainable Transport"

<sup>139</sup> Including CCC's ROWIP



a clear adverse impact on current farm practices and risk significant reduction in farm business productivity.

- 6.84 It is necessary to take into account the nature and size of agricultural machinery when determining the viability of proposed diversions as a result of the crossing closures. It is also important to consider the fact that once a crossing is closed, it is unlikely to be re-opened, therefore future opportunities for land use and development may be restricted.

### **Cambridge Local Access Forum (O52)**

- 6.85 The CLAF considers the revised NPPF is relevant to its case through the support it gives to planning for, and protecting access used by, NMUs both in rural and urban areas. The CLAF wishes to bring the following policies supportive of access in both rural and urban areas to the attention of the Inspector and asks that they are taken into account:

91. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:
  - a) ... .. allow for easy pedestrian and cycle connections within and between neighbourhoods, ... ..
  - c) enable and support healthy lifestyles, ... .. -for example, through the provision of safe and accessible green infrastructure, ..... encourage walking and cycling.
98. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.
104. Planning policies should:
  - d) provide for high quality walking and cycling networks .....
118. Planning policies and decisions should:
  - a) encourage multiple benefits from both urban and rural land, including .....improve public access to the countryside;

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 6.86 Having been asked by the Secretary of State to report on the Statement of Matters as set out at SOM3, above, I was not satisfied that the initial information provided was sufficient [6.67 and 6.68]. I asked for relevant information at the opening of the Inquiry and on at least two further occasions prior to the adjournment of the Inquiry before Christmas 2017. The extremely late submission<sup>140</sup> [6.70] suggests that there was a retrospective fitting of the proposal to policies rather than taking account of policies in the drawing up of the proposals, as should be the case [6.1 – 6.2].
- 6.87 As set out in section 4 of this report I consider that the statutory requirements have generally been met [6.5 – 6.8]. There is reference to a number of policies which are said to be relevant [6.9 – 6.14] with a lack of objection [6.7] appearing to be indicative of compliance.
- 6.88 Whilst CCC suggested that there was no Local Plan in place in relation to two of the DCs [6.62], this is not the case [6.9 – 6.11]. As such the application for planning permission should be determined in accordance with the relevant development plans, unless material considerations indicate otherwise. The NPPF is a material consideration and there was no indication that the relevant Local Plans were not in accordance with the latest NPPF.
- 6.89 The NPPF puts an emphasis on sustainable transport [6.20, 6.49 and 6.76]. Train travel is part of that picture and whilst the NPPF indicates that priority should be given to pedestrian and cycle movements [6.21], this is primarily in the context of transport and travel. A similar comment arises in relation to the Cycling and Walking Investment Strategy 2017 [6.73]. Some of the crossings, for example C04, section 7.2, & C31, section 7.18, had particular evidence of transport use and each of the DCs have a sustainable transport strand within their plans [6.9 – 6.11]. The recommendations are made with those matters in mind where relevant.
- 6.90 The NPPF gives weight to health and well-being, which were part of the wider strategic matters referred to [6.23, 6.44, 6.46, 6.48, 6.60 and 6.85]. These matters are relevant across the application and relate to CCC policies [6.50 – 6.52], although I agree with CCC that they appear to be of particular importance in the Fenland DC area, crossings C12, C14 and C15, sections 7.6 – 7.8 [6.46], Policy LP2 [6.9].
- 6.91 In relation to good design, principles for which are enshrined in the DC policies [6.24], it is the case that the works would, generally, be of a minor nature and of the type associated with management of the highway network [6.24]. The construction of the proposed stepped access

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<sup>140</sup> NR-INK-32

associated with C07, section 7.3, were not included in works Schedule 1, with reliance placed instead on article 5(3)(e) of the Order<sup>141</sup>.

- 6.92 A PMW has been agreed in relation to biodiversity [6.26] and there has been agreement to prepare a CEMP [6.38]. It will be noted no EIA was required for this application following screening [6.39]. Conditions relating to such matters, including the historic environment [6.27, 6.28 and 6.64] have been put forward and are included in section 12 [6.40, 6.41, 6.63].
- 6.93 Highway safety has been included within the NPPF [6.77] and would clearly contribute to issues of economic and social objectives. Where these matters have been raised in relation to crossing proposals they have been considered, for example C04, section 7.2.
- 6.94 Concerns of reduced access to farmland [6.80] were raised, with indications of how this relates to the development of business in the rural economy [6.80 – 6.84]. These matters have been considered in relation to relevant crossings, where existing agricultural access has been identified in terms of either public or private use, for example C02, C33 and C34, section 7.1.
- 6.95 The overarching objective of the NPPF [6.17], for sustainable development to be achieved by meeting economic, social and environmental objectives, is argued to have been met [6.19].
- 6.96 The NPSNN forms part of the planning system established under the 2008 Planning Act to address Nationally Significant Infrastructure Projects (NSIPs). It sets out the need for, and Government's policy to deliver, development of NSIPs on the national road and rail networks in England. The sections of the NPSNN identified by NR refer to relevant matters [6.29]. This application is not an NSIP and so I have only taken it as an indication of Government policy in relation to national transport networks. However, I agree with the Ramblers that there is a need to consider the NPSNN as a whole [6.71, 6.74 and 6.75].
- 6.97 Whilst planning policies are referred to as being of particular relevance in the Guide, there is limited need for planning permission in relation to this application [6.3 – 6.4]<sup>142</sup>. The proposals were designed primarily to impact on the minor public and private highway network, including rights of way [6.53] and so the ROWIP, which is part of the LTP [6.30, 6.54 – 6.56] and works with the CHWBS [6.57], is particularly relevant, as is the LTP itself.
- 6.98 CCC has recognised the strategic reasons for the application [6.34 and 6.65]. NR argues that their approach has complied with the relevant policies [6.36 and 6.37] but given that CCC has specific duties and responsibilities in respect of that network [6.53] it is appropriate that they should provide commentary in relation to their own relevant policies [such as 6.58 and 6.59] and the wider SOAs and GPs [6.55 – 6.57].

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<sup>141</sup> NR-INQ-38

<sup>142</sup> See Schedule 1 to the Order, NR-INQ-38

- 6.99 I consider that the Secretary of State can be satisfied that it would be the case that public transport improvements would result [6.22, 6.31, 6.33 and 6.65], as well as improvements in safety, in general terms, for users of the crossings [6.42].
- 6.100 There is a general consistency with the policies [6.43] although, there was a feeling that a 'railway-centric' stance [6.69] had been taken in relation to the application as a whole. However, it would be fair to say that every individual and organisation will approach matters from their own perspective. The making of decisions needs to balance wider policy matters [6.31], as indicated by other interested parties [6.60 6.66 and 6.78] and, in providing advice to the Secretary of State in relation to each crossing I have aimed to balance the interests as appropriate, bearing the above relevant policies in mind [6.79].

## **7. CROSSINGS CONSIDERATIONS**

- 7.1 Having discussed the strategic case<sup>143</sup>, this section of the report focuses on the individual crossings. Where crossings are related, they are dealt with together within this section, as was the case at the Inquiry.
- 7.2 For each of the crossings I have provided a conclusion as to whether or not they should be included in the Order. This conclusion takes account of all the matters already discussed, that is the strategic case, the PSED<sup>144</sup>, the extent to which the proposals are consistent with other policies<sup>145</sup>, the other objections and support as appropriate<sup>146</sup> and all other related matters.
- 7.3 The Recommendations section<sup>147</sup> summarises the findings.

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<sup>143</sup> Section 3 of this report

<sup>144</sup> Section 5 of this report

<sup>145</sup> Section 6 of this report

<sup>146</sup> Section 8 of this report

<sup>147</sup> Section 13 of this report

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

### **Description of the Crossings and Surrounding Area**

- 7.1.1 These crossings are situated on land belonging to, and/or farmed by, FCPS. The land is split by the Liverpool Street to Ely railway line (BGK), which runs generally north – south and comprises 2 tracks, carrying passenger and freight trains, with line speeds of up to 75mph (up) and 90 mph (down).
- 7.1.2 The A10 runs generally parallel to the railway to the west and the River Cam to the east. The A1123 runs generally east-west to the north of the land and there is a fully automated level crossing, Dimmock's Cote, providing access across the railway line at this point.
- 7.1.3 The northernmost crossing C02, Nairns No 117, is a private user worked vehicular crossing with telephone (UWCT). It is a private accommodation crossing with an agricultural track passing east to west. On the eastern side of the railway a private track heads north between Railway Farm and the railway towards the A1123 road. To the west the private agricultural track provides access to Chittering Farm.
- 7.1.4 Further to the south is C33, Jack O'Tell which is a passive user worked crossing (UWC) with stop, look, listen signs (SLL). The crossing is vehicular and a public footpath, FP16, also crosses the railway here. There is no separate provision for pedestrians, who must use the vehicular gates.
- 7.1.5 A little distance further south Waterbeach Footpath 18 ("FP18") crosses the railway via C01, Chittering. This is a passive footpath level crossing with stiles in the railway boundary fence (FPS) and SLL. There are no private rights of way at the level crossing. The unsurfaced footpath runs from the south-west and on the east side of the railway passes north along the field boundary adjacent to the railway to join FP16.
- 7.1.6 The southernmost crossing, C34, Fysons, provides access to farmland on each side of the railway via unmade farm tracks crossing agricultural land, linking to Long Drove approximately 500m to the east of the level crossing. This is a passive private user worked crossing (UWC) with SLL. Long Drove is a cul-de-sac public road running north from Waterbeach.
- 7.1.7 The general surrounding area is farmed fenland with some larger villages. Immediately to the north of the land is the village of Stretham and Waterbeach lies to the south.

### **Description of the Proposal**

- 7.1.8 The original proposal was to close all three private vehicular crossings to the vehicular users. This proposal altered through the course of the Inquiry and the intention is now that one C34, Fysons, would be closed to all users, with the extinguishment of the private rights.

- 7.1.9 The ALCRM score for this crossing is A6 and a questionnaire completed by the authorized user in December 2016 stated daily usage comprised 2 pedestrian traverses and 9 vehicles. The alternative access over the railway would use private farm tracks and adopted highway to divert to Bannolds level crossing, to the south, which has automatic half barriers and an ALCRM score of D5.
- 7.1.10 Of the remaining two vehicular crossings, C02 Nairns No 117 and C33, Jack O'Tell, 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. The question as to which would remain open was still the subject of discussion at the close of the Inquiry due to requirement for further third-party negotiation. An assurance has been provided by NR that only one of the vehicular crossings would be closed.
- 7.1.11 It was not possible to confirm which crossing would remain open as it depends on securing rights on third party land, providing connections to the relevant land holdings. Negotiations for the acquisition of such rights had not been completed. 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. These assurances are enforceable against NR and can be relied upon by the Secretary of State in making the Order; amending the Order to remove one of the crossings would frustrate the process of mitigating the impacts of closure. The NR approach is supported by CCC and, in substance, acceptable to FCPS although they maintain objections, which are addressed below.
- 7.1.12 The ALCRM score for C02, Nairns 117, is B2. Between May 2006 and September 2015, there were 6 incidents of deliberate misuse, and one near miss. Since April 2016 there have been 5 incidents of deliberate misuse at the crossing, and there has been one near miss and on 12 August 2016 there was a collision.
- 7.1.13 An authorised user questionnaire received in December 2016 gave indicative usage of the level crossing of 16 vehicular traverses per day. If C02 was closed, with the extinguishment of the private vehicular rights, users would be able to use the existing private tracks on either side of the railway, giving access to Newmarket Road A1123 and Dimmocks Cote level crossing. That crossing is an active crossing with automatic half barriers and has an ALCRM score of D1.
- 7.1.14 An alternative would be available via a new private track running parallel to the railway line to give access to C33 Jack O'Tell. The ALCRM score for this level crossing is A2 and a census in May 2016 recorded 2 vehicles and 12 pedestrians using the crossing. A questionnaire completed by the authorised user in December 2016 stated daily use as 3 pedestrian traverses and 11 vehicles. Between 2011 and 2015 there were 2 near misses at the crossing, one involving a tractor on 11 September 2014.

- 7.1.15 If the Order were to close C33, it would extinguish the existing private vehicle rights over the level crossing. The alternative vehicular crossing routes would be the proposed new track referred to above, giving access to C02, Nairns 117; or, via private farm tracks and adopted highway to Bannolds level crossing to the south, which has automatic half barriers and an ALCRM score of D5, or the A1123 to the north.
- 7.1.16 Regardless of which of the private vehicular crossings were closed the intention would be for FP16 to remain unaffected. Pedestrian wicket gates would be provided on either side of the railway, rather than the current vehicular gates. FP16 links Chittering Drove, approximately 650m west of the crossing, and Long Drove, approximately 900m east.
- 7.1.17 The Order proposes to close crossing C01, Chittering, extinguishing the public footpath rights associated with FP18. The ALCRM score is C10 and the 9-day camera census recorded no use of the crossing. The Order would confer powers to close the level crossing to all users and extinguish existing PROW over the crossing. Users would be diverted to cross the railway at C33, Jack O'Tell to the north.
- 7.1.18 A proposed new 2m wide unsurfaced footpath, approximately 250m in length, would be provided on the western side of the railway within the field boundary to tie into the existing FP16. Two footbridges would be constructed over existing drainage ditches. On the eastern side of the railway, approximately 300m of FP18 north of the level crossing, to the junction with FP16, would be extinguished so that a cul-de-sac would not be left. The distance for users from the west and wishing to head east along FP16 would be increased by approximately 425m.
- 7.1.19 Where crossings were closed the infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.



## The Case for the Applicant, Network Rail

- 7.1.20 C01 Chittering is a little used footpath crossing, if it is used at all. The diversion directs walkers to the footpath crossing at C33, Jack O'Tell, to the north. There is no substantive objection to this proposal.
- 7.1.21 In relation to OBJ/05 and OBJ/52 there is concern that the level crossing is a vital link in a circular route from Waterbeach and that the proposed diversion is unacceptably long, with an uninspiring walk along the railway line and use of another at-grade level crossing. They would favour technology improvements to the level crossing over closure.
- 7.1.22 NR do not find the alternative route is significantly longer and the current route also runs along the railway line. The circular walk would remain available. An aspect of managing the risk associated with the potential increase in users of the network is to direct users to a single railway crossing point. NR is satisfied that the proposed diversion route is a convenient and suitable replacement for existing users.
- 7.1.23 C02 Nairns, C33 Jack O'Tell and C34, Fysons, are user worked crossings on land farmed by FCPS as part of a substantial agricultural enterprise. As the original Order proposal, that all three crossings should be closed, would displace farm traffic onto the road network NR, in discussion with FCPS and CCC, now proposes to close C34 and either C02 or C33. By retaining one crossing point, the impact on FCPS's operation would be minimised and CCC's concerns about the wider highway network would be addressed.
- 7.1.24 FCPS suggest that the Order should not be made until there is certainty as to which crossing would be retained but that would frustrate the objectives of the Order. FCPS accept, in principle, that one of the crossings should close and one remain open – the position which NR would be bound to achieve because of the terms of the undertaking<sup>148</sup>.
- 7.1.25 FCPS make a further argument that a full barrier, or Automatic Half Barrier (AHB), should be installed on the retained crossing. They relied on the incident at C02 Nairns to justify this demand; however, this incident was caused by the criminal misuse of the crossing by FCPS's own employee in the course of his work. Any implication that the fault may lay elsewhere is inconsistent with the subsequent conviction and imprisonment for endangering the railway.
- 7.1.26 This idea is without merit as the cost of provision would be upwards of £2 million due to the detailed resignalling work that would be required for such provision in this location. This would be an unjustifiable burden on the public purse. NR propose to install MSLs at the retained crossing, which would be an improvement to the existing situation since it would obviate the need to telephone for approval to cross with all but the largest vehicles. This is proportionate to and appropriate for an accommodation crossing on a farm.

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<sup>148</sup> Which was not submitted as part of the Inquiry evidence for reasons of confidentiality

## The Cases in Support

### Andy Tyler obo Fen Line Users Group (S2)

7.1.27 FLUG supports the closure/alteration of 14 crossings<sup>149</sup> within the Order, including these four crossings. Media coverage of the accident at C02, Nairns No. 117 was included in the appendix information. This resulted in serious injuries to the land-rover driver.

### Keiron Parnell (S3)

7.1.28 Mr Parnell supports NR's proposal to close crossing C02 – Nairns No 117. This level crossing is on private land used for commercial use. It has no automatic barriers and relies on users calling to check that the track is clear. Between 2011 and 2016 this level crossing had 2 incidents of misuse and 1 accident.

7.1.29 That accident took place on August 12 2016. Mr & Mrs Parnell were on that train along with about 113 other passengers. The Parnell's were in the front carriage heading for a night at the Proms and relied on NR and Great Northern trains to get them there safely. The train was hit by a Land Rover on the crossing, and Mr Parnell indicated that it was one of the most terrifying moments of his life.

7.1.30 Mr Parnell will never forget the face of the train driver as he told us a car had hit the train. It was amazing how fast he recovered and acted to ensure trains were stopped on both tracks to prevent further accidents.

7.1.31 British Transport Police said that the crash was caused by the driver not calling ahead but driving across the line unauthorised. Luckily the train was not full, and the impact did not de-rail the train, otherwise the crash could have been much worse. The result was still a severely injured driver of the vehicle, a very shaken train driver, 155 passengers considerably shaken with plans ruined and an impact on thousands of commuters whose journeys were disrupted. It is understood that the vehicle driver is being prosecuted for endangering the safety of passengers on the railway.

7.1.32 To have a safe and reliable railway, it should not be possible for people to cross a railway line with a train approaching, risking their own lives and all those travelling on the railway. The crash shows that manual procedures are not a failsafe way to ensure the safety of passengers and rail employees. NR had already identified this crossing for closure before the crash. If the process had been shorter there would have been no injury or trauma.

7.1.33 The landowner is opposing this closure but surely the lives of his workers, friends, rail passengers and staff should be more important than the time taken to drive to the next crossing, which has barriers.

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<sup>149</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

**Lynne Parnell (S4)**

- 7.1.34 Mrs Parnell is in support of NR's proposal to close several crossings in the Cambridge region, in particular crossing C02 – Nairns No 117. Most people presenting to the Inquiry will be users of the level crossings who would be inconvenienced if the crossings are closed and they need walk or drive further. But it is essential to accept that preventing potential loss of life or serious injury is more important than losing a few minutes per journey. Mrs Parnell has been involved in one of the incidents where serious injury occurred.
- 7.1.35 Mrs Parnell is not an expert in rail injury, although she now has an interest in ensuring when purchasing a ticket for a train, that NR have done all they can to ensure the safety of rail crew, rail passengers and crossing users. Mrs Parnell's information comes from personal research of the incident she was involved in and others either at the same crossing or other similar crossings. She was stunned to find out there were previous issues at the crossing and accidents with injuries at other similar crossings.
- 7.1.36 Any crossing with a similar manual safety mechanism to this crossing has the potential to have a similar incident. C02, Nairns No 117, is on private land used for commercial use. It has no automatic barriers but relies on crossing users calling to check that the track is clear. This only requires a lapse of judgement from a crossing user and there is an incident between a train and a vehicle or pedestrian.
- 7.1.37 NR's data shows there have been several incidents at the crossing. The last assessment was in August 2016 and reported 7 incidents in the year from August 2015 and a further 2 incidents since August 2016. These include 6 reports of misuse, 2 near misses and 1 accident. These 9 incidents in less than 2 years were on a crossing with an average of 2 vehicles and 3 pedestrian or cyclists per day. These individuals are crossing a line with 186 trains/day travelling at 75 mph. As the land adjacent to the crossing is commercial premises, there would be additional pressure for individuals to avoid waiting at the crossing and delaying commercial activities. In most commercial environments you expect management to have a duty of care to prevent a lapse in judgement being able to result in injury to the employee or other individuals and property.
- 7.1.38 The statistics include real people being put at danger by the level crossing. The accident mentioned took place on August 12 2016. Mrs Parnell was on the train with her husband and about 153 other passengers. She was in the front carriage heading for a night out at the Royal Albert Hall Proms, relying on NR and Great Northern trains to get us there safely. This was not achieved through no fault of either company.
- 7.1.39 The train was hit by a Land Rover on Nairns No 117 level crossing, which hit the side of the train and damaged it so that it careered along the track to a stop quite a distance from the accident. It was one of the most terrifying moments of her life, and she preferred not to go

into detail. Mrs Parnell indicates that she will never forget the face of the driver as he came to say that a car had hit the train. It was amazing he managed to recover and act to ensure trains were stopped on both tracks to prevent further accidents. The air ambulance landed to treat and transport the Land Rover driver to hospital. Passengers had to remain on the train for several hours, on a very hot day, for an investigation to take place and for another train to be provided.

- 7.1.40 British Transport Police have said the crash was caused by the driver not calling ahead and driving across the line unauthorised. He was taken to court and on 28 July the British Transport Police issued a press release stating that he had pleaded guilty to endangering the safety of persons on the railway.
- 7.1.41 The driver suffered serious injuries himself, but was still sentenced to 10 months in prison, due to the seriousness of the crash. The press release stated the train driver suffered shock and post-traumatic stress disorder. Cambridge News reported that 105 trains were delayed, 34 cancelled and 38 part cancelled; these delays cost £290,000. There was more than £100,000 damage to the train.
- 7.1.42 Luckily the train was not full, and the impact did not de-rail it, or the crash could have been worse. The result was still a severely injured land-rover driver, a shaken and distressed train driver, 155 passengers considerably shaken with plans ruined and an impact on thousands of commuters whose journeys were disrupted.
- 7.1.43 To have a safe and reliable railway, it should not be possible for people to easily cross a railway line with a train approaching, at risk not only to their own lives but to all of those travelling on the railway. The driver told the police he knew the procedure for the crossing, but for reasons unknown he chose not to follow them.
- 7.1.44 This crash shows that manual procedures are not a failsafe way to ensure the safety of passengers, rail employees or farm workers. NR had identified this crossing for closure before the crash. If the process had been shorter the train driver, train passengers and vehicle driver would have been saved injury and trauma.
- 7.1.45 The landowner is opposing the closure but surely the lives of his workers, friends, rail passengers and staff are more important than the time taken to drive to the next crossing which has barriers? No commercial pressure to get produce to customers should come higher than the safety of people. Commercial time pressure and manual safety procedures are a dangerous mix.
- 7.1.46 The risk of serious injury and possible fatalities could be removed by closing the crossing and the users driving or walking to the next gated crossing. No commercial pressure should be accepted as making this risk acceptable when the solution is so simple.

## The Cases in Objection

### Jill Tuffnell (O5)

- 7.1.47 Waterbeach Footpath 16 uses C01 and provides a useful link between Waterbeach Village and the Fen Rivers Way, a promoted long-distance footpath between Cambridge and King's Lynn. The crossing is a vital link in a circular walk from Waterbeach, a village scheduled to expand, becoming a new town. This is likely to increase pressure on the sparse network of off-road routes in the area and so it is not the time to reduce footpath opportunities.
- 7.1.48 The alternative route is unacceptably longer, with an uninspiring walk alongside the railway line to another at grade level crossing, Jack O'Tell (C33). There is no increase in safety, just a saving in maintenance costs. The sightlines are good and could be enhanced with pedestrian lights, such as at Shepreth, gates, a timetable on a notice board and the provision of close boarding across the rails.

### Cambridgeshire County Council (O12)

- 7.1.49 Having initially objected to the closure of C33, Jack O'Tell, and C34, Fysons, CCC were satisfied that the Solicitor's Undertaking given by NR resolved their concerns. They withdrew their objection on 12 December 2017<sup>150</sup>.

### Jonathan Stiff, Cheffins Rural Professionals *on behalf of* F C.Palmer & Sons and subsidiary companies, Fenland Farmers Limited, Fenland Farming Limited, Fields 9,10,11 Limited, Fields 16-17 Limited and Fields 71-72 Limited (O15)

*Additional separate objections were made in relation to these crossings which are dealt with together here. The individual objections were made by **Lucy Frazer QC MP on behalf of Mr Luke Palmer of F C Palmer & Sons (O38), Ian Palmer on behalf of F C Palmer & Sons (O39), David Palmer on behalf of F C Palmer & Sons (O40), Adam Palmer on behalf of F C Palmer & Sons (O41), Keir Petherick on behalf of F C Palmer & Sons (O42) and Luke Palmer on behalf of F C Palmer & Sons (O51)***

- 7.1.50 FCPS farm 3,150 acres of land, which straddles the Cambridge to Ely railway line. Within this is 146 acres is at Little Farm on a five-year Farm Business Tenancy ("FBT") and 716 acres under a contract farming arrangement. 1,508<sup>151</sup> acres are situated on the east side of the railway line. The land is served by a range of packing and storage facilities located on the western side of the railway at Chittering Farm. The farm office and main workshops are also on the western side of the railway line at Stowbridge Farm.
- 7.1.51 The main farm roadways linking the buildings on the west to the land on the east of the railway use the level crossings at C33, Jack O'Tell and C02, Nairns. There is also a further 240 acres of land to the north of New Farm which would be severed by the closure of the crossings.

<sup>150</sup> OBJ-12-INQ-04a

<sup>151</sup> Mr Luke Palmer (O51) indicates that 1,753 acres are on the eastern side of the railway.

- 7.1.52 The farm grows on a rotation including wheat, barley, beans, potatoes, carrots, beetroot, leeks, celery, lettuce and turf. The majority of the crops are high-yielding root and salad crops, which involve intensive operations and irrigation. All produce harvested from the 1,508 and 240 acres referred to has to be transported back to the buildings at Chittering Farm for grading and storage. The total number of movements over the level crossings to grow and harvest the crops on this land amounts to 9,700 movements per year.
- 7.1.53 NR held a public consultation in July 2016 outlining the proposal to close the level crossings known as Fysons (C34), Jack O'Tell (C33) and Nairns (C02) as part of the Anglia Level Crossing Reduction Strategy. FCPS attended the consultation and completed a questionnaire objecting to the proposal. Although they provided details of their farming operations and the usage of the crossings to Harmer Associates on 25 July 2016 and again to Messrs Adjei, Prowse and Boulton on 20 January 2017, NR did not take account of the information when deciding on the closure of these level crossings.
- 7.1.54 NR did not engage in any meaningful consultation until a meeting held on 12 June 2017, attended by Andrew Prowse, Gareth Lay, Andrew Kenning and Jonathan Boulton. FCPS explained the impact of the proposed closure of the three level crossings on their business.
- 7.1.55 There are two possible alternative access routes from Chittering Farm to the land referred to: via the A1123 and the level crossing at Dimmocks Cote; or, via the A10 Trunk Road, the village of Waterbeach and the level crossing at Bannold Drove.
- 7.1.56 There are major drawbacks to using the A1123, being road safety and access rights through Little Farm. In the last two years, FCPS have had three road traffic accidents with farm machinery turning right off the A1123 onto the farm roadway.
- 7.1.57 Access through Little Farm is only due to the FBT. If that was not the case in future the alternative route would result in an increase in the volume of agricultural traffic on the A10 Trunk Road, which at peak times is already severely congested. It would also mean an increase in the volume of agricultural traffic through the village of Waterbeach.
- 7.1.58 If all three level crossings were closed and FCPS had to travel via the A10 this would add up to 1 hour per movement, or 9,700 hours, to their operations each year. The estimated cost to the business would be in the region of £375,000 per annum.
- 7.1.59 Now that NR have understood the implications of the closure of all three level crossings on the business, it has decided not to close both Nairns and Jack O'Tell but to leave one crossing open to vehicular traffic for farming operations. This is welcomed with the understanding that the decision as to which crossing should remain open depends on the provision of appropriate means of access between the crossing in question and the remainder of the holding.

- 7.1.60 It is understood that if Nairns Crossing remained open, then NR would upgrade the crossing with the provision of MSL and if Jack O'Tell crossing remained open, NR would upgrade it with the provision of MSL and installation of a telephone system. The proposed level of upgrade works would be inadequate. According to NR's Statement of Case, all three crossings are classified as high risk; the closure of two of the three crossings would concentrate all of the agricultural traffic onto a single crossing.
- 7.1.61 NR has pointed out that the incident at Nairns crossing in 2016 was an example of misuse of a crossing used by a commercial entity. Whilst FCPS's employee was at fault for the accident, it would not have happened if the crossing had been equipped with a barrier. The provision of MSL at either crossing would not eliminate the risk of unintentional misuse of the crossing.
- 7.1.62 Whilst NR has accepted that one of the crossings has to remain open, it would appear that they are putting the cost of upgrading the crossing ahead of the safety of both the users and the travelling public. Since it was understood that NR's primary objective in seeking compulsory powers to close these crossings was to eliminate the risk to crossing users and the travelling public, the concentration of all the agricultural traffic onto a single crossing would not eliminate the risk and the provision of MSL would do little to mitigate the risk.
- 7.1.63 FCPS have stated that they would only accept the closure of two crossings if the remaining crossing was fully automated with barriers in order to reduce the risk as far as possible. The Inquiry evidence reinforces the view that NR carried out very little research into the use of the three level crossings and decided to close them before carrying out a proper assessment of the impact of the closure on the business. The public consultation exercise was at best inadequate and at worst ignored the consultations which were not helpful to the project.
- 7.1.64 NR is putting cost ahead of safety in refusing to fully automate the crossing which remains open. FCPS continue to object to NR being granted compulsory powers to close the level crossings.
- 7.1.65 The only acceptable option would be to fully automate C33, Jack O'Tell, with full length barriers and vehicle radar, improving the access tracks to the level crossing to accommodate the increase in traffic. NR could then close the level crossings at C34, Fysons, and C02, Nairns.

### **Ramblers Association (O26)**

- 7.1.66 Having initially objected to the closure of this crossing (C01), the Ramblers withdrew their objection on 27 November 2017 being satisfied that C33 would remain open for use as a public footpath [7.1.17].

### **Ely Group of Drainage Boards (O29)**

- 7.1.67 The Ely Group of Internal Drainage Boards (IDBs) is a consortium of ten Drainage Boards covering 47,000 hectares of the Fens, providing

water level management via 29 Pumping Stations. Board consent is required for works on watercourses within the Boards District and for any works within nine metres of a Main Drain. The Pumping Stations have limited capacity and so unattenuated surface water discharge is not allowed, with new discharges requiring Board consent.

- 7.1.68 C33, Jack O'Tell (Adam's Crossing)<sup>152</sup>, is used to access the Main Drain network for maintenance work. Closure would lead to additional expense in the movement of plant.

**Simon Clewlow, Clewlow Consulting Limited on behalf of Mr J S Martin, Mr J J Martin, Mr B H Sanders, Mr A K Shipp, Aquila Investments Limited and RLW Estates Limited (O33)**

- 7.1.69 The named individuals and organisations have an interest and are variously affected by the proposed Order in relation to C01 Chittering, C33 Jack O'Tell and C34 Fysons. None objects in principle, supporting the aims as set in the Statement of Aims and recognising the benefits to improve rail-related safety, create the conditions for a more efficient and reliable railway, reduce costs and delays and, in particular, facilitate capacity and speed increases to achieve future improvements on the network.

- 7.1.70 The issue which does not appear to have been taken into account in relation to the alternative access arrangements is that of agricultural security, i.e., the risk that the alternative routes would facilitate access to parts of farm holdings for which the railway and the present level crossings are an effective means of securing the isolation of fields. This prevents anti-social activities such as fly-tipping or crop damage. The issue is of less concern in relation to these crossings as the changes only affect footpaths.

**National Farmers Union (O43)**

- 7.1.71 Evidence was given by Cheffins acting for FCPS. It was made clear that the NR proposals would only be acceptable if the C33 Jack O'Tell crossing was kept open as the first option, with C02, Nairns, as the second preferred option. The open crossing should have a fully automated barrier or half barrier and the access required through the land currently occupied under a FBT agreed. MSL would not provide enough safety at the crossing.
- 7.1.72 Nothing more has been heard from NR or agreed and so FCPS request that the Secretary of State does not authorise the closure of all three crossings. Unless NR can confirm that the access through the land under the FBT has been agreed, all three crossings should remain open. The access to reach land on a daily basis if all were closed would not be realistically workable to the farm business.

**Cambridge Local Access Forum (O52)**

- 7.1.73 Waterbeach FP16 provides a useful link between Waterbeach village and the Fen Rivers Way, a promoted long-distance footpath route

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<sup>152</sup> The original objection referred to this as C01, Chittering but this was subsequently corrected, NR-INQ-21



between Cambridge and King's Lynn. C01 is also a vital link in a circular walk from Waterbeach. The village is scheduled to expand considerably, becoming an effective 'new town', and so pressure on the sparse network of off-road rights of way is likely to increase significantly. This is not the time to reduce footpath opportunities.

- 7.1.74 The alternative route proposed is unacceptably longer and involves an uninspiring walk alongside the railway line and a diversion to another at-grade level crossing (C33 Jack O'Tell). There is no increase in terms of safety, only a saving in maintenance costs for NR.
- 7.1.75 The sightlines at the crossing are good. Safety could be greatly enhanced if NR installed pedestrian lights, such as at Shepreth, gates, a timetable on a notice board and close boarding across the rails.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Site visit

7.1.76 I made an unaccompanied site visit on 6 September 2017, having sought permission, via NR, to access the land so as to view all the existing and proposed routes. A request was made for a further accompanied visit which I undertook on 19 February 2018 with representatives from the landowners, CCC and NR.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.1.77 Matters of agricultural biosecurity were raised by a party otherwise in support of the general principle [7.1.69 & 7.1.70]. I consider that a reduction in the number of crossing points would be likely to improve biosecurity, concentrating the area within which any access – legal or illegal – could be controlled.

### C01, Chittering

7.1.78 The landowners did not refer to any reliance on C01 for access through the farm. The provision of a new route on one side of the railway line mirrors the removal of a route on the other [7.1.18] and so there would be a balance in terms of potential effect on the agricultural business.

7.1.79 If C33 remains open to private vehicular use then there would be an increase in both agricultural traffic and public pedestrian use on this crossing, due to the diversion from C01. A separate pedestrian access would be provided [7.1.16] and this should improve the situation. However, the land owners would need to take appropriate steps to ensure that employees were aware of the need to take account of potentially increased pedestrian use in this area.

### C02, Nairns No. 117, C34, Fysons and C33, Jack O'Tell (Adam's Crossing)

7.1.80 It would be fair to say there was a lack of appreciation of the scale of the agricultural business run by FCPS and the potential implications for that business and other road users in the initial stages of this process [7.1.50 – 7.1.54]. However, as matters progressed these issues were taken into account, leading NR to alter their proposal [7.1.23 & 7.1.59].

7.1.81 There was support from rail users for the original proposal to close as many level crossings as possible from a safety perspective [3.53 -3.56]. In relation to C02, Nairns, the incident in August 2016 [7.1.25, 7.1.27, 7.1.28 – 7.1.32 and 7.1.34 – 7.1.44] clearly focussed attention on this crossing, as well as the general principles.

- 7.1.82 It was argued that commercial interest should not be put above safety for all users [7.1.33 & 7.1.45 – 7.1.45]. On the other hand, the landowner has identified the significant cost which would arise if all three level crossings were closed [7.1.58]. Although this may be viewed as purely a commercial cost the reality is that this may affect business viability, local employment opportunities and/or consumer on-cost.
- 7.1.83 The alternatives available would lead to increased farm traffic on the highway network [7.1.55 – 7.1.57]. Evidence was presented of incidents on the road network involving agricultural vehicles and this also has an impact on safety for (road) users and hold-ups following an incident, causing delay, including those traveling to and from work and business [3.55].
- 7.1.84 CCC raised concerns about the potential impact on the highway network but were content with the undertaking to keep one crossing open and withdrew their objection on that basis [7.1.49]. The Stage 1 Road Safety Audit<sup>153</sup> failed to identify the issues raised by CCC but did indicate a potential problem with pedestrians on the A1123. As C02, Nairns (No.117) is not a public right of way the only pedestrians would be connected with the agricultural use; such use appears to be minimal and likely to be adequately dealt with by the current proposals.
- 7.1.85 Taking account of all these factors I consider that the Secretary of State can find an appropriate balance in relation to all the affected parties, and relevant matters, by reducing the number of private vehicular crossings from three to one, as now proposed. This would reduce the potential conflict points between agricultural vehicular use and rail users; avoid the introduction of greater potential conflict on the local road network; and reduce the potential effect on the farm business.
- 7.1.86 It has been understood that the determination of which crossing should remain open – C02 or C33 – relies upon negotiations. It would have been preferable for these matters to have been dealt with during the consultation, prior to drafting an Order [7.1.23 and 7.1.65]. However, I consider that the acceptance by the objector and CCC of the undertaking [7.1.49 and 7.1.59] should give confidence to the Secretary of State that both crossings can be included in the Order, but ultimately one would be left open to private vehicular use.
- 7.1.87 Whichever crossing were to remain open NR intend to provide a telephone system and MSL. It was argued for the landowners that the 2016 incident would not have occurred had C02 been equipped with a barrier, not just the telephone system, and, therefore, a barrier should be provided for the remaining crossing [7.1.60]. It was felt that there was a risk of further incidents unless more was done in terms of mitigation and, on that basis, objection to closing the crossings remained [7.1.60 – 7.1.64 and 7.1.71 – 7.1.72].

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<sup>153</sup> NR32-2 & NR-INQ-09

- 7.1.88 I heard evidence of the requirements to accommodate provision of a barrier in this location [7.1.26]. I consider that the proposal of MSL and a telephone is appropriate in this situation when balancing matters of overall cost, safety and responsibility for use. There is nothing to prevent NR reconsidering this matter at a later date.
- 7.1.89 The drainage board indicated that they used C33 for access to the Main Drain network [7.1.67 & 7.1.68]. C33 would remain available under the proposals [7.1.20] and so it appears access to the drain would be unaffected. The issue as to why the proposal should lead to additional expense [7.1.68] was not articulated through the Inquiry process.
- 7.1.90 Taking account of all the matters raised, I consider that the Secretary of State can find that this proposal – as proposed to be amended – would provide a reasonable solution to reduce the overall number of crossings, whilst retaining crossings suitable for the users. The potential impacts identified are fairly balanced by the proposal.

**SOM 4(b) Impacts on other users**

- 7.1.91 As noted above it may be that private vehicular use and public pedestrian use would be concentrated onto C33. In this instance appropriate steps would be needed to ensure there was minimal conflict.
- 7.1.92 I shall deal with potential effects on the walking public under SOM(4)(e).
- 7.1.93 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network; it was clear from the presentation to the Inquiry in relation to C02 in particular that the impact of incidents on the individuals involved is high [7.1.34 & 7.1.39]. In this case one level crossing would remain open to PROW users and one would close; one level crossing would remain open to private vehicular users but two would close. It is not yet known whether this would result in total closure of two or three of the level crossings, however, the proposal would remove an element of risk from the railway in this area, which I consider would benefit rail users.

**SOM 4(c) Impacts on flood risk and drainage**

- 7.1.94 I have referred to the required access by the drainage authority in SOM 4(a). Clearly an inability to carry out the required works may lead to flood risk and drainage issues. However, there appears to be no reason why use could not continue on C33 or be provided via C02 as required. A matter of compensation may arise in providing that access.

**SOM 4(d) Any other environmental impacts**

- 7.1.95 No matters were raised with regard to this matter and I noted nothing on my site visits to indicate that there would be such impacts.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**C01, Chittering

- 7.1.96 In relation to C01 there was no indication of use during the nine day census [7.1.17], despite the suggestion that this was a link and circular route for Waterbeach Village [7.1.47 & 7.1.73].
- 7.1.97 The alternative route would make use of C33 [7.1.20], over which FP16 passes. As a result, the private vehicular users would be used to sharing that access with walkers. If C33 closes to private vehicular use, then there would be no conflict. However, if C33 becomes the only private vehicular access route as a result of the proposal then there would be an increase in vehicular movements, which could have safety implications for all users.
- 7.1.98 Looking at the wider area – the proposed development of Waterbeach lying to the south-west – I agree with NR that the links and circular routes remain available [7.1.22]. The shorter partly circular route would be available without any need to cross the railway line, which may be preferable to some walkers.
- 7.1.99 In relation to the additional length [7.1.18, 7.1.48 & 7.1.74] I note that one of the matters of concern was that with new development there should not be a reduction in the off-road network [7.1.47 & 7.1.73]; this additional length should not be viewed as a negative in this instance. I consider that the increase in distance in the context of route used for leisure purposes is not unreasonable.
- 7.1.100 The proposed route to the west would run alongside the railway and replaces a section to the east of the line such that users of the potential shorter circular route would be no worse off in terms of the time walking in such a location [7.1.47 & 7.1.73]. For those making use of the longer route there would be additional walking in this location. However, bearing in mind that the northern section of FP16 run alongside the line in any case [7.1.22], I consider that users undertaking such a walk would not feel uncomfortable with the route. The railway line runs generally elevated from the surrounding land and I do not consider that passing trains would be overly intrusive in terms of the walking experience in this area.
- 7.1.101 In terms of accessibility C01 has stiles but wicket gates would be provided at C33, also improving the current pedestrian access at that crossing [7.1.16]. Although I understand the desire to retain and improve individual routes [7.1.48 & 7.1.75] the point of the Order is set out within the strategic case and relates to rationalisation of the network in the first instance. NR are aware of the potential increased use and it is not unreasonable to manage that at a single crossing point in this instance [7.1.22].
- 7.1.102 A new footpath with two footbridges would be provided to the west of the railway whilst to the east, approximately 300m of FP18 would

be extinguished [7.1.18]. CCC, as the highway authority raised no concerns regarding maintenance.

C02, Nairns No. 117, C34, Fysons and C33, Jack O'Tell (Adam's Crossing)

7.1.103 As set out above C34, Fysons, which is the southernmost of the UWCs, would be shut under the proposal. Users would be able to divert further south to cross via Bannolds level crossing, which would use Long Drove and another minor public road to give access back to the home farm, storage and processing area. In the alternative use can be made of the private farm tracks and whichever of the two UWCs would remain open [7.1.23].

7.1.104 Whichever of C02 and C33 remained open would provide access to Stowbridge and Chittering Farms for the agricultural business as a whole [0 and 7.1.50]. I consider that either of these routes would provide a reasonable access, which is already in use for such purposes.

**Public Sector Equality Duty**

7.4 Given the overall distances that would need to be walked in order to make use of either C01 or C33 there appears to be no likelihood of a significant effect on users in diverting to the alternative route.

**Conclusions**

7.1.105 Taking account of all the above, and all other matters raised, I consider that the Secretary of State should include these proposals within the Order. It would be noted that there is an undertaking in place to ensure that one of the UWCs would remain open.

7.1.106 However, it remains open to the Secretary of State to determine not to include the proposals relating to private use – C02, C33 and C34 – within this Order. NR could then draw up an Order setting out the final proposal, indicating which crossing would be left open following negotiations, at a later date.

## **7.2 C04, No Name No. 20**

### **Description of the Crossing and Surrounding Area**

- 7.2.1 Meldreth Footpath 10 ("FP10") crosses the King's Cross to Cambridge railway line to the south-west 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. Meldreth Railway Station lies a short distance to the north-east of the Station Road bridge and has a pedestrian bridge linking to a footpath, which runs to and alongside the A10, terminating on Station Road to the east of C04. There are two further footpath links to the north-east.
- 7.2.2 FP10 starts on Kneesworth Road to the west of Meldreth and follows field boundaries and an access road. Directly to the north-west of the railway line the field boundary treatment has been removed and so the footpath effectively crosses an open field, although a 'verge' has been left demarcating the route. C04 is a passive footpath level crossing, with stiles in the boundary fences on both sides of the railway line. To the east of the railway line FP10 runs almost directly east, alongside the field boundary, to join Station Road and Byway Open to all Traffic 12 ("BOAT12") alongside Fieldgate Nurseries. BOAT12 runs south-west to and crosses the A10.
- 7.2.3 The general surrounding area appears to be farmed land with villages and varied commercial enterprises. The City of Cambridge is to the north-east, with Bedford a little further west-north-west and the town of Royston a short distance to the south-west. The railway line and a number of main roads provide connectivity to and through the area.

### **Description of the Proposal**

- 7.2.4 The ALCRM score for the crossing is C5, with one near miss recorded on 17 December 2016. This is a passive footpath level crossing with stiles in the railway boundary fence and SLL signs. The railway comprises 2 tracks, carrying passenger and freight trains, with a line speed of up to 90 mph. A 9-day camera census in June 2016 recorded a total of 53 pedestrians using the crossing, with the busiest day having 12 users.
- 7.2.5 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, generally north-easterly along the northern field margin next to an existing turkey rearing barn. The route would pass alongside an industrial estate, crossing the access road to join the Station Road footway.
- 7.2.6 On the east side of the railway the section of 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 to BOAT12 and the existing footway. Users would be required to use Station Road as an alternative to FP10.

- 7.2.7 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.

### **The Case for the Applicant, Network Rail**

- 7.2.8 This became the most controversial of the proposals. Nonetheless, it is maintained that the Order should provide for the closure of C04 and the diversion as proposed.
- 7.2.9 The usage of the crossing is relatively low, albeit regular and as the crossing has stiles either side only those able to cross stiles use the route at present. Station Road provides a suitable crossing of the railway for existing users. It is currently used by pedestrians far more than the route over C04 with up to 90 pedestrians a day.
- 7.2.10 The narrow footway, which was the focus of much of the resistance to the proposal, is an existing condition; an issue which CCC are clearly satisfied does not present any special risk to pedestrians at present since it would be bound to address that risk if it thought otherwise. The Order proposals do not worsen the condition of the footway, they simply put a small additional number of users onto it. If users were diverted from the crossing then, at most, the pedestrian flow on Station Road would be 10-20% above current levels.
- 7.2.11 Despite the perception of risk arising from the footway, there was no evidence of accidents on that route. The incline on Station Road is 1 in 20 at worst, which is acceptable for wheelchair users. C04 itself is very unlikely to be used by those with significant mobility issues due to the stiles. Station Road is currently used by those with mobility impairments and if there is an issue it is unrelated to the Order proposal. The claim of a breach of a duty in the Equality Act 2010 was not pursued under cross examination.
- 7.2.12 NR proposes to create a new field margin footpath in the southern part of Station Road. This would improve the current situation, where those walking south of the railway have to cross at the entrance to Valley Farm to use the footway.
- 7.2.13 The diversion route north of the railway is suitable and convenient and would not have any unacceptable impacts on landowners or users. It would follow a field margin for the majority of the length, which presents no issues for users. Before the junction with Station Road, it would cross part of the circulation road for the industrial estate. This would not present any significant safety issues; pedestrians on Station Road cross the same industrial estate access road whilst walking into Meldreth. At the site entrance itself, the footpath would be separate from the site access, with which Mr Peter Taylor<sup>154</sup> was satisfied. The maximum increase in distance is around 324m and any diversion must be constructed to the reasonable satisfaction of the highway authority.
- 7.2.14 The impact on the AP Burlton turkey shed has been overstated. The NFU asserted that walking past a poultry building created a biosecurity

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<sup>154</sup> CCC Road Safety Engineer



hazard but the Defra guidance on biosecurity for poultry units<sup>155</sup> makes no mention of people walking past such units, as opposed to being permitted access to them. The poultry business would have to prevent unauthorised access, but it presumably does so now.

- 7.2.15 The potential impact on AP Burlton's future aspirations is speculative as there is no planning application and no plans. Although originally described as free-range farming, the NFU later referred to a desire to construct a "new turkey building". NR cannot promote the Order on the basis that a landowner might wish to develop in the future, especially when their intentions are unclear. If they were to develop then they would have to deal with the footpath network as it existed and apply for diversion orders if necessary. With regard to the footpath diminishing the value of the land, that would be dealt with by compensation.
- 7.2.16 The alternative diversion route referred to, running close to the railway, was rejected during consultation, leading to the present proposals. The landowner raised safety concerns at Round 1 of consultation<sup>156</sup>. It does not represent a realistic alternative to the Order scheme.
- 7.2.17 NR does not accept that the notification process was misleading and discriminatory. NR complied with the relevant legislative requirements of the Transport and Works (Applications and Objections) Procedure Rules 2006 ("the 2006 Rules") in relation to giving notice of the application and objection period, with a site notice and 7 stopping up notices (in three forms) displayed at the crossing. The 2006 Rules envisage the display of a single notice in a specified form and do not prescribe how such notices should be erected. A copy of the site notice for crossing C04 is appended<sup>157</sup> as well as the stopping up notices<sup>158</sup>. The plan or plans relevant to each crossing were appended to each notice and provided where further information could be obtained.
- 7.2.18 Laminated notices were erected at or in the vicinity of the crossing, some attached to existing infrastructure and others to posts erected for the purpose<sup>159</sup>. They were maintained and regularly checked by NR's agents until the end of the objection period. The photographs show a number of the notices in situ, showing that they were displayed in a number of different ways, depending upon the location. An interested person would readily be able to seek further information and know where to make an objection to, or representation about, the proposals.
- 7.2.19 The crossing has some issues for users who have limited mobility due to stiles on either side of the track. In addition, there are uneven grass pathways on either side of the crossing. Crossing the concrete track to the north of the line may reduce accessibility for users with limited

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<sup>155</sup> NR-INQ-27

<sup>156</sup> NR5, Appendix D

<sup>157</sup> NR-INQ-17, Appendix 2

<sup>158</sup> NR-INQ-17, Appendix 3

<sup>159</sup> NR-INQ-17, Appendix 4

mobility and may pose a safety risk to young children who could be injured by the jagged and uneven concrete surface.<sup>160</sup>

- 7.2.20 There is a high density of equality groups in this area. However, it appears that the crossing is not an integral part of non-motorised travel, as alternative routes, such as via Station Road bridge, provide easier access to local facilities. There are no community facilities accessed by this crossing and businesses close to the crossing are more likely to be reached via Station Road due to its proximity to them.
- 7.2.21 Safety is especially relevant as children, older people, disabled people and men are more likely to be involved in accidents at level crossings than other groups in society.

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<sup>160</sup> There appeared to be some confusion at this stage regarding the definitive line with reference to use of the concrete pathway to the north, which is not the recorded public right of way.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

7.2.22 FLUG supports the closure/alteration of 14 crossings<sup>161</sup> within the Order, including this crossing.

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<sup>161</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## **The Cases in Objection**

### **Mr R and Mrs J Braham (O2)**

- 7.2.23 As owners of plot CO4 MR & Mrs Braham object to the plan to redirect the footpath. The entrance to the site (points 01 & 02) is a heavy traffic area, used constantly by cars, buses, farm and heavy goods vehicles. It would be safer to put steps slightly further along.
- 7.2.24 The proposed siting in front of the commercial units puts the general public at increased risk of injury due to the car and commercial vehicle servicing activity. The public would also need to cross the entrance to the neighbouring units, belonging to Mr Burlton (O48, O49 and O50). There is no access to the road in front of units 1 – 3 for traffic passing to or from Mr Burlton's units, due to the risk of injury for our tenants and their clients from two-way traffic.
- 7.2.25 The public have successfully and safely used the concrete track proposed by Mr Burlton for decades, which has the advantage of increased pedestrian visibility to any traffic.

### **Susan van de Ven (O9)**

- 7.2.26 Councillor van de Ven was an interested person in her own right but gave evidence to the Inquiry as part of CCC's case.
- 7.2.27 I have been the Cambridgeshire County Councillor for the Melbourn and Bassingbourn Division since 2009; a District Councillor in Cambridgeshire from 2004 to 2010 and then from 2013 to 2014. I have over 13 years of experience as a Cambridgeshire Councillor and have lived in Meldreth for 23 years.
- 7.2.28 In 2010 I founded the Meldreth Rail User Group ("MRUG"), which was granted Community Rail Partnership status in October 2013. The group is in the process of becoming a Community Interest Partnership, currently awaiting approval from the Department for Transport.
- 7.2.29 I have had regular contact and interaction with NR in my capacity as a Cambridgeshire County Councillor but believe NR to be an organisation that do not follow things up and lack consistency. NR tend to disappear from proceedings and cease all contact without explanation. My experiences have shown NR to be wasteful of their resources, with no regard for the resources of other parties that they are dealing with. This is especially problematic when the party in question has more limited resources than NR, such as CCC.
- 7.2.30 CCC have struggled with managing their resources in opposition to an organisation operating from a much stronger and more financially stable bargaining position. NR have made no attempt to understand or to offset this. This has been prevalent throughout the TWAO process.
- 7.2.31 Part of the TWAO Application process requires the Applicant to conduct consultation periods in order to give people affected by the Order an opportunity to voice their concerns. I believe that NR were going through the motions and they did not take the process, nor the

concerns of those who attended, seriously. Many of my constituents would agree with that statement.

- 7.2.32 I believe these issues stem from poor management and because individuals often do not have the authority to act independently. Unfortunately, it is not just NR who pay the price as CCC and its constituents are being made to suffer as a result.
- 7.2.33 NR were invited to a meeting of MRUG to give them an opportunity to hear our concerns. NR stayed for only 10 minutes, which showed they did not take the meeting, nor the opportunity to interact with members of the public, seriously. NR have not acted reasonably throughout the TWAO Application Process.
- 7.2.34 In relation to the proposed diversion, this would amount to serious diminishment of enjoyment of the PROW Network as users would be forced to walk through an industrial estate. The current route is popular with many constituents who walk their dogs and run along the route. The diversion route does not have these amenities and therefore is less likely to be used.
- 7.2.35 The footway on Station Road, proposed as part of the diversion route, is steep and narrow, especially over the bridge. I believe that people with disabilities, especially people in wheelchairs or the elderly, would struggle to use the path.
- 7.2.36 Station Road is busy in part due to the nearby Meldreth train station. There are often building works undertaken along Station Road. Therefore, I am concerned that my constituents would be put into harm's way due to the proximity of the narrow footway with oncoming traffic and also increased traffic flow.
- 7.2.37 The proposed route would pass through the entrance to the industrial estate, which is also a safety issue as it puts users into direct contact with Heavy Goods Vehicles (HGV). The businesses on the industrial estate are unused to having members of the public walking through there and there would be an increased risk of accidents.
- 7.2.38 The current route is important as it connects users and communities. There would be a detrimental impact on connectivity.
- 7.2.39 The Meldreth area is currently growing, in terms of population size, at an increasingly rapid pace. The PROW Network is now more important than it has ever been. Extinguishing part of it in a way that disrupts the connectivity of communities would have a particularly detrimental effect on a growing community and the ties to the surrounding area.
- 7.2.40 Diverting users from crossing C04 to Station Road would lead to increased infrastructure burden on CCC. NR have not addressed this.
- 7.2.41 There were letters of support from 12 people to keep the crossing open. Some were from groups like The Ramblers' Association and so represent the views of a larger number of people.

7.2.42 The provision of notice locally has been so poor that many people are probably still unaware of the proposed closure. Several ardent objectors have been put off the effort of objecting by NR's attitude and the long drawn out process of the TWAO.

**Professor Geoffrey Grimmett (O10)**

7.2.43 Professor Grimmett was an interested person in his own right but gave evidence to the Inquiry as part of CCC's case.

7.2.44 He has been the Professor of Mathematical Statistics at the University of Cambridge since 1992 and, since 2013, the Master of Downing College, at the University of Cambridge. He has lived in Melbourn since October 1994.

7.2.45 Professor Grimmett lodged a Freedom of Information (FOI) request with NR on 11/08/2016 to request information on the plans for the PROW Network around Meldreth. NR wrongly asserted that the proposed extinguishment of rights on this level crossing were only concerned with a Private Right of Way as FP10, which crosses C04, is a Public Right of Way recorded on the DMS. Professor Grimmett responded with a correction but never received a reply. His perception is that NR have little understanding of or regard for the value of the PROW Network to local users.

7.2.46 Professor Grimmett has used the level crossing since 1994 as part of a circular jogging route from Melbourn. This generally follows a route along the byway from Melbourn Bury to Station Road, or Station Road from Melbourn, and then on FP10 westerly across C04 onto Chiswick End, Meldreth. Depending on weather and workload, he runs this route about 3 times per week, 25% of the time continuing due south-west along BOAT11 and FP13 as part of a longer route via Mettle Hill.

7.2.47 According to data provided by NR under the FOI request, there have been no safety related incidents at this crossing in the last 10 years. He perceives the risk to be zero and it cannot be reduced further.

7.2.48 The current proposal would decrease the safety of users of FP10 as it displaces them onto a busy two-way road. It would require them to traverse the steep railway bridge on a narrow footway, which is only one metre wide, and to enter an industrial area with regular heavy and light traffic. The incline of the bridge would pose physical difficulty for some pedestrians and children. Professor Grimmett is concerned that as he gets older traversing that route would become significantly more difficult. There is doubt over the junction between the field path and the road footpath at the south-east point of the bridge crossing, where the current infrastructure reduces the width to around 0.70m.

7.2.49 The distance from one side of the crossing to the other would be notably longer, by 480 metres according to the NR plan of March 2017. The closure of the crossing would be a loss of amenity to the users of the rights of way network around the beautiful environs of the local villages.

- 7.2.50 Professor Grimmett surveyed the number of vehicle movements on the road bridge during a random minute period at 16:45pm on 06/04/17 and there were 13 vehicle movements on the road. The bridge footway is too narrow to permit the safe passing of individuals, pushchairs, etc, in such traffic conditions.
- 7.2.51 NR's proposal would shift the risk from the rail network to the road network. This would increase the level of risk for pedestrian users.
- 7.2.52 NR's reasons are confused. They assert that closing a crossing that manifests no risk, has relatively limited usage, and with minimal maintenance would help to achieve targets of improving the safety of level crossing users, delivering a more efficient and reliable railway. This closure would have zero impact on these targets.
- 7.2.53 There is inevitably some cost involved in maintaining any crossing but, having watched this crossing for over 23 years, he estimates that cost to be very tiny indeed. The stiles and the crossing itself are basic and elementary and receive very little if any maintenance.
- 7.2.54 The PROW Network is important to the public and should be protected and maintained unless a reasonable and balanced proposal which adequately mitigates the effect on public enjoyment of the crossing closure is put forward. This proposal falls well short. Professor Grimmett values this route greatly and would miss it if it were closed.
- 7.2.55 The provision of information by NR has been insufficient. The protracted process has put many individual, independent objectors off following through with their objections.
- 7.2.56 The way notices were posted on site was inappropriate as they were partly illegible to the users. The notices were nailed to planks of wood at either end of the crossing, with no attempt to draw them to the attention of users. The notices were printed double sided and nailed to posts, making the back of them unreadable. The notices were difficult to understand and read. They did not seem to be up to date and not show the most current plans for the crossing.

### **Graham Borgonon (O11)**

- 7.2.57 Mr Borgonon is a regular user of all the footpaths in this parish and along with many other members of the local community, have made representations opposing the Network Rail Level Crossing Closure at every stage of the Consultation process so far.
- 7.2.58 NR's changes to the original proposal are welcome in that crossing a busy local road below the railway bridge would be eliminated; and, field-edge routing at the western end would avoid some of the industrial area which, amongst others, is occupied by vehicle repair units servicing cars and heavier commercial & agricultural vehicles.
- 7.2.59 The major points made in earlier local representations remain. The hazardous safety issue of increased pedestrian traffic negotiating the rail bridge, which carries constant heavy traffic through Meldreth. This

has a narrow footway, which is less than standard minimum width. Attempts to upgrade the footway and/or to introduce single-way traffic have failed due to expense. A 19th century rail bridge carries 21st century traffic without any improvement to safety for users, particularly for pedestrians and cyclists needing to access key services such as the secondary school and health centre in Melbourn.

- 7.2.60 FP10 facilitates pedestrian access to the Fieldgate retail outlets at its southern end without any engagement with road traffic. It is shorter than the proposed route and the local view is that using the level crossing is considerably safer than using the rail bridge. The sightlines are excellent at the rail crossing. If NR were concerned about safety, it could be enhanced by use of warning lights as is the case with the footpath crossing immediately upline from Shepreth station.
- 7.2.61 Mr Borgonon remains opposed to this closure and urge rejection of it for the greater safety of local residents.

### **Cambridgeshire County Council (O12)**

- 7.2.62 This proposal moves a traffic-free route onto an alignment which places users in conflict with traffic using the integral service roads of the industrial estate and then along a narrow footway alongside the carriageway where it runs over the road bridge.
- 7.2.63 It was accepted by Ms Tilbrook that the alternative route has a "perception of being in an unsafe environment" and that the footway over the bridge "does not meet the current standards for footway provision". The proposal, which is longer than the existing route, would result in a 20% increase in use.
- 7.2.64 The CCC Senior Public Health Manager of Environment and Planning indicated that this diversion, taking people onto a road, detracts from the aesthetics of a "green route". Walkers are willing to go out of their way to use more attractive facilities, but their tolerance for detours is limited.
- 7.2.65 CCC believe that the stiles, which are not an amenable method of providing access to a level crossing, are unlawful limitations to the public's use of the route. The Definitive Statement records that the path as dedicated subject to the existence of gates and CCC have not authorised stiles<sup>162</sup>.
- 7.2.66 A number of witnesses commented on the inadequate way in which the notices for the proposal had been posted. Notices had not been posted in the positions marked on the plans provided by NR. Notices that had been posted were not crossing specific but included reference to multiple crossings, thus causing uncertainty. They had been posted in such a way that it was impossible to read them, i.e., double-sided and fastened to posts so that only one side could be read. Mr Smith, an experienced PROW professional with significant experience of order-

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<sup>162</sup> Whilst the NR DIA Scoping Report, August 2016 refers to stiles the Equality and Diversity Overview, October 2017, refers to gates.



making procedures, confirmed that such a practice was unacceptable. He did not consider the notices to have been properly or appropriately posted on site.

### **J Gilhooly (O13)**

- 7.2.67 Gilhooly Commercials is a commercial garage with many large vehicles passing in and out of the workshop 6 days a week. It is already difficult to manoeuvre vehicles safely in this area without adding pedestrians unfamiliar with the danger of reversing HGVs. As well as vehicles associated with this business there is another commercial workshop on the site, a minibus workshop and a high volume of agricultural vehicles in and out of the drive. The corner entrance is a high traffic area, with a blind spot when driving HGVs and Public Service Vehicles ("PSVs") in and out. These vehicles utilise the complete width of the entrance to leave the site safely and quickly without disturbing traffic.
- 7.2.68 There have been a number of thefts in the area and so there are two locked gates in place in evenings and weekends, which would block the proposed pathway. It is not clear if these can remain in place.
- 7.2.69 It would be extremely dangerous for a public footpath to run in this area and safer to keep the current level crossing open.

### **David Robinson (O17)**

- 7.2.70 Mr Robinson was an interested person in his own right but gave evidence to the Inquiry as part of CCC's case.
- 7.2.71 Mr Robinson has lived in Grantchester since 2007 and is retired from employment in an electrical wholesaler. He has been a keen train and railway observer and photographer for over 30 years. On average he does this 3 or 4 times a week, sometimes more depending on the weather and time of the year. He often uses PROW to visit good observation spots.
- 7.2.72 Mr Robinson was unable to attend any of the consultation sessions that NR undertook as there were none scheduled near where he lives. He believes this to be a weakness in NR's consultation process as some people, who are impacted by the TWAO Application would have had to travel unreasonable distances just to attend consultation processes, even if they knew about them.
- 7.2.73 The notices left at crossings, purportedly to inform the public about the TWAO process, were not sufficient and were generally unhelpful. They were left in illogical and non-prominent places and it was not obvious to the casual passer-by what they referred to. The notices were too long, and he does not believe that many users would have bothered to read them. As the notices were not crossing specific, referring to the TWAO as a whole, they did not bring the attention to users that the works would affect that specific crossing.
- 7.2.74 Mr Robinson usually parks at the industrial estate off Station Road and walks west to FP10 and then due south, to and over the crossing itself. He has been using the route since moving to Grantchester 10 years ago

and, depending on the weather, might use it twice a week or once a month.

- 7.2.75 As well as using the footpath to observe trains, Mr Robinson walks this route to keep fit and because of the general enjoyment of being out in the open, fresh air. He also uses the route to travel to the farm shop just south of the crossing, where he might stop and shop. He often passes other people on the path such as dog-walkers. The crossing itself is an amenity; Mr Robinson enjoys walking the footpath and watching trains run through the area.
- 7.2.76 Station Road is busy with cars travelling towards the station and lorries travelling to the industrial estate and other places. Mr Robinson has had no problem with the footpath crossing over the railway. The proposed diversion would take users from a crossing where he feels safe, with sightlines for at least a quarter of a mile on both sides, and put them in harm's way, directing them along a busy road.
- 7.2.77 There would no enjoyment in walking along the proposed diversion route. It's nice to walk in the countryside as there is more chance of seeing animals than on roads. Mr Robinson indicated that if the diversion goes ahead, he would probably stop walking this route.
- 7.2.78 The footpath is important to maintain access to the southern part of the route and the amenities without going on the road. The proposed route is not suitable or convenient as an alternative. The PROW network should be protected and improved, not extinguished.

### **National Farmers Union (O43)**

- 7.2.79 Evidence to the Inquiry was given on behalf of A P Burlton (Farms) Ltd (O48), the Anthony Burlton Will Trust (O49) and the Anthony Burlton 2011 Trust (O50).
- 7.2.80 There would be a biosecurity risk in creating the footpath as proposed. It would run on the field edge next to the turkey building, which houses 9,000 turkeys. The proposal would also interfere with future development of the turkey business as once created it would be difficult to divert it. This would also be an additional cost to the landowner. It is likely that if the footpath was sited on the field boundary, planning permission would not be given for a new turkey building, which would have a massive adverse impact on the business.
- 7.2.81 The footpath would be diverted over two vehicular access routes to the commercial units, creating a safety issue.
- 7.2.82 An acceptable route for creation of the footpath would be along field margin which runs alongside the concrete track. This would take pedestrians off the concrete track and away from any farm vehicles or HGVs using the access route. Any dust from vehicles is insignificant compared to the biosecurity risk to the turkey business. Proximity to the railway line is not an acceptable reason to justify creating a footpath on agricultural land.

**Dr Roger James (O45)**

- 7.2.83 Dr James is a resident of Meldreth and member of Meldreth Parish Council.
- 7.2.84 The overall objective of the proposed closure lies with improving the safety of level crossings, which local people would support. Level crossings themselves are not hazardous; the hazard arises from the use of the crossing by people. The case as presented considers only risk reduction for the crossing rather than taking the hazard to the pedestrian using the crossing or the alternatives. If the crossing was closed the alternative route is more hazardous; this has not been considered or assessed by NR.
- 7.2.85 The case to close the crossing was based upon an internal risk assessment process (ALCRM risk scores). At the public consultations I asked questions about the risk assessment in general and the evaluation of this crossing in particular. No evidence was provided.
- 7.2.86 The House of Commons Transport Committee Safety at level crossings Eleventh Report of Session 2013–14 provides some background and says that the process of safety assessment (ALCRM risk scores) is used “so that [NR] can allocate resources to the highest risk crossings”. It also reports that “Models are only as good as their underlying data and assumptions”.
- 7.2.87 Although the importance of local factors was emphasised to us, these are not incorporated into the scores produced by ALCRM and the Rail Accident Investigation Branch has identified this as a weakness in the risk assessment process.
- 7.2.88 The quality of Network Rail’s risk assessments, including ALCRM, was recently the subject of judicial criticism. The meaning of the risk scores is not readily understandable and accompanying guidance is of limited use. It is difficult to discern which level crossings present a high fatality risk to individual, frequent level crossing users, who are assumed to make 500 traverses each year.
- 7.2.89 ORR has set Network Rail a target to reduce level crossing risk by a further 25% over Control Period 5 (2014-19). NR’s funding settlement for Control Period 5 includes dedicated funding of £109 million to close a further 500 level crossings and improve safety at hundreds more of the highest risk crossings.
- 7.2.90 I have used NR’s figures to investigate the risk scores for the 5 crossings in Meldreth. This crossing is only the 3rd most unsafe crossing with the two more dangerous crossings not being considered. The crossing immediately adjacent to C20 (C19) is less than 200 metres away on the same stretch of track and rated with the lowest ranking possible, M13. This difference could not be explained simply by the difference in the number of pedestrians using it. The proposal to close this crossing has not been subject to a rigorous and robust analytical procedure.

- 7.2.91 The ALCRM scores are the basis of NR's strategic investment in safety. C04 lies around 1,373 in the UK and there are 258 equally 'risky' crossings in the UK which, when rank ordered with the most dangerous positioned at number 1, occupy the range 1,218-1,476 from the list of 6,000+. Even if the ALCRM for C04 is valid this crossing is not the place to start if the limited funds for investment are set to 'hundreds of closures'. If C04 were assessed equivalent to its near neighbour C19 the rank ordering would fall to 6,462 and C04 would be one of the safest in the country. In seeking to close this crossing NR is failing to address its duty to focus on the crossings of highest risk.
- 7.2.92 A criticism of ALCRM was that the importance of local factors were not incorporated into the scores. The local situation here is that NR propose to close a pedestrian crossing on a straight and level section of track with excellent visibility in both directions and then route pedestrians through an industrial working site and across a narrow footway over a railway bridge which itself has a history of accidents.
- 7.2.93 No fatal accidents have occurred on either the road or the railway crossing and so any decision can only be made on assessments of the potential for harm. These assessments are based on models and the history of incidents (near misses). For risk mitigation the study of 'near misses' is an important and standard approach.
- 7.2.94 The site photographs<sup>163</sup> at the rail crossing show clear and unrestricted visibility at the crossing point, estimated at around 2.4km in either direction. The alternative pedestrian path is unsafe due to biohazards from passing a working turkey farm; traversing the 'hard standing' of a number of busy vehicle repair companies; traversing the bridge; double crossing of the road to follow the footway at Burlton's Farm and Fieldgate Nursery. The hazards were identified in the consultation, but the only remediation offered was the last stretch of footway.
- 7.2.95 The bridge crossing is a notorious local hazard, with a history of multiple 'bumps, scrapes and near misses'. In February 2017 a 'white van' ran off the road and was suspended on the bushes. It was cleared without police report. Recent photographic evidence is a snapshot of the history of the risk, which is why the Parish, District and County Council regard it as an area for risk reduction, not a safe area to promote more pedestrian use.
- 7.2.96 The bridge approaches are narrow, windy and obscured whilst the traffic is mixed, heavy and at speed. Pedestrians join this hazard with an inadequate footway and the need to cross the road twice at corners to stay on hard paving. The Burlton's Farm corner has particularly poor visibility, as is evident from the skid marks; there is a tight bend and no room for manoeuvre.
- 7.2.97 The street view from Google Maps shows the narrowness of the footway and the blind cornering across the bridge. It also shows, via the skid marks, yet another 'close shave' for people and vehicles crossing the

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<sup>163</sup> Appended to OBJ-45-INQ-01

bridge. At its widest the bridge footway barely reaches 1 metre and along much of the length it is little more than 0.8 metres.

- 7.2.98 Quantitative risk assessment is a challenging task and no readily accepted model for the relative risk of the rail crossing and the road crossing exists. However, in the material presented by NR there has been no quantitative or comparative assessment of the risk to the pedestrians on the road crossing. A competent analysis would consider a risk framework such as that used in the road safety training manual and would apply this equally to each crossing to determine the risk to pedestrians on either of the two routes.
- 7.2.99 The risk framework has elements including factors influencing exposure to risk, such as safe/unsafe options, mix of traffic and vulnerable users, number of vehicles, period of risk vulnerability; actors influencing crash involvement, such as design speeds, safe places, warning measures, avoidance measures, visibility; factors influencing crash severity, such as actual speed, type of vehicle, type of pedestrian, visual or mobility impairment; and those influencing post-crash outcome of injury, such as rescue and recovery of victims, difficulty of evacuation and extraction from vehicles.
- 7.2.100 The alternative road bridge crossing develops a risk profile many orders of magnitude worse than the rail crossing as there are more vehicles on the road than trains on the railway. NR suggest 166 train crossings per 24 hours with the road bridge having 10 times this many, peaking at around 250 during school and work rush hour periods. In terms of visibility, for a pedestrian crossing on the track it would take over 1 minute for a train traveling at 90 mph to reach the crossing from the sighting distance. For a pedestrian crossing the road a car, traveling at 30 mph, arrives in about 6 seconds.
- 7.2.101 The exposure to risk on the railway endures for the period of crossing time, say 10 seconds. For the road bridge the risk accumulates over the time walking over the bridge, estimated at 2 minutes. In the event of an accident the survivability of a train incident at 90 mph is approximately zero, whilst for a road traffic incident at 30 mph the survivability is 50%. Rail is worse by a factor of two, although many trains are slowing to stop at Meldreth and would be travelling under 30 mph at this crossing.
- 7.2.102 This is not a complete analysis, but it is clear that the road option exposes pedestrians to a significantly higher risk to than the rail crossing. It is unsafe to add to the volume of foot traffic on this route before bridge widening has been carried out.
- 7.2.103 NR propose the closure of the crossing and the transfer of the pedestrian traffic onto the road. In other parts of the network safety remediation has retained the crossing but invested in additional safety measures. NR's information for the region shows safety investment maintaining crossings on the same ALCRM score as this one. Closure is not the only option. Other options, such as signage and automatic train

detection/warning systems, could be introduced to avoid use of the road crossing.

- 7.2.104 Safety concerns over level crossings mean that it is unlikely that new crossings would be permitted. Once a crossing is closed it would not be re-opened and the public amenity would be lost. Closure had only one favourable response in round 1 of consultation and none in round 2, producing statistics against closure of 85% and 100% respectively. Weighted by the evidence of NR's audit on the use of Cambridgeshire crossings, the proposed closure proportionately raised the greatest number of objections across the region.
- 7.2.105 The many local objections have been ignored. The notices were poorly designed, with the details only on the reverse side of a double-sided notice. In many locations, and predominantly those around the crossing, this was mounted in such a way as to prevent people viewing the full content.

**Mr Michael Burlton on behalf of A P Burlton (Turkeys) Ltd (O48)**

*Additional separate objections were made in relation to these crossings which are dealt with together here. The individual objections were made on behalf of the **Anthony Burlton Will Trust (O49)** and the **Anthony Burlton 2011 Trust (O50)***

- 7.2.106 The closure of the crossing would be inconvenient as it is used to access the buildings to the north from the main farm to the south.
- 7.2.107 The proposed new route is in extremely close proximity to a poultry rearing building and business units. This would bring the general public very close to the poultry building, which causes concern regarding biosecurity, particularly in view of the Avian Influenza outbreak prior to Christmas and further subsequent outbreaks.
- 7.2.108 No proposal has been made to what the security measures would be. At present the site can be secured by locking gates. The addition of a footpath would not offer the same level of security by nature of the route proposed.
- 7.2.109 The farm traffic accessing the poultry building, and the traffic to the business units, present a significant risk to the general public. There has been no suggestion as to how the risk would be managed.
- 7.2.110 The discussions with NR, or their representatives, have failed to address all the issues and concerns raised.

**Barbara James (O53)**

- 7.2.111 Closing this crossing would be dangerous as it would decrease safety of pedestrians by making them take a more dangerous route. There is no evidence the crossing is dangerous or that the change is needed.
- 7.2.112 The proposed new route involves walking over a busy, narrow bridge with a small footway. Most pedestrians try to avoid this path as traffic passes very close and is dangerous. There was a serious accident here

just a few months ago. There is a footway on only one side of the road, so pedestrians need to cross on a blind bend. This puts pedestrians at far greater risk than using the railway crossing.

- 7.2.113 Trains approaching Meldreth station would not be going at top speed as they have to slow down, even if they are not stopping. The railway crossing is on a long, straight section of track with good, clear visibility. This is far safer than the narrow, bendy road with fast, busy traffic and poor visibility. There is no evidence that the railway crossing is unsafe but plenty to demonstrate that the alternative route is far more dangerous.
- 7.2.114 The responses from the public to the consultation on closing the crossing show an overwhelming number in favour of keeping the crossing open. An accurate interpretation of the responses shows very few people in favour of any change or the proposed new route.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Site visit

7.2.115 I made an unaccompanied site visit on 4 September 2017, viewing the proposal so far as possible from existing PROW and roads. Given the matters raised during the Inquiry I made an additional unaccompanied site visit on 20 February 2018.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.2.116 In relation to the owners/occupiers of the land used as a turkey rearing unit situated at the western end of the industrial estate, evidence was presented to the Inquiry by the NFU on their behalf [7.2.79]. The main farm, Valley Farm, is situated to the east and it was indicated that there was some use of the crossing as access between the farm and buildings [7.2.106]. The landowner appears to be using the same route as the public and the proposed alternative route via Station Road appears to be no longer than the access via the footpath.

7.2.117 In relation to the proposed route to the south of the existing turkey barn the Defra biosecurity advice does not indicate that the proximity of the route would be of particular concern [7.2.13, 7.2.80 & 7.2.107]. There was discussion at the Inquiry about the addition of a bund alongside the barn at the implementation stage, which I believe would reduce concerns. The security measures in relation to the public in the industrial unit would be applicable to the general public on a footpath in the vicinity [7.2.13 and 7.2.108], in line with the biosecurity advice.

7.2.118 The desire to develop the business in this area is noted, however, there were no firm plans before the Inquiry and such an Order could not be held indefinitely in case any particular landowner may wish to develop their land [7.2.15]. It cannot be assumed that planning permission would not be granted due to the presence of a footpath in this location [7.2.80], although there would be a requirement for additional permissions. It was indicated at the Inquiry that an undertaking could be given to cover the cost of diversion at the relevant time. However, there could be no guarantee that an order to divert would be confirmed if objections arose.

7.2.119 The alternative route on the farm track alongside the railway line was rejected at an early stage [7.2.16]. There was a suggestion of existing public use of the track [7.2.25] and I observed a runner using the track and C04 during my February site visit, although I do not know whether this was evidence of general public use or permitted access. The suggestion of a route alongside the track could potentially overcome the concerns raised, as well as other matters arising on the proposed northern route [7.2.82], as discussed below.



- 7.2.120 The creation of the footpath crossing the industrial estate circulation roads is of concern to owners, occupiers, tenants and users [7.2.23, 7.2.24, 7.2.34, 7.2.37, 7.2.48, 7.2.67, 7.2.81, 7.2.94 and 7.2.109] although a change from an earlier proposal avoids use of part of the western end of the estate [7.2.58]. It would not be possible to lock gates across a public right of way at any time and this would affect the ability of the owners/occupiers to secure the industrial site [7.2.68 and 7.2.108] as currently. Further fencing and gating would be required in this area, but this could potentially be covered through the detailed design as set out in the Environmental Assessment Summary<sup>164</sup>.
- 7.2.121 The access onto Station Road, P147<sup>165</sup>, would be shared with vehicles accessing to and from the industrial estate and farmland [7.2.37, 7.2.67 and 7.2.76]. It was indicated in cross-examination that the RSA looked at this area and no problems were identified. It was said that it could be included at RSA2 and would be discussed with CCC as the local Highway Authority.
- 7.2.122 Users of the Station Road footway would cross the entrance at present and it was said that the footpath would be separate from the site access [7.2.13]. However, having seen the site I consider that the changes would result in users interacting with traffic in this area in a way which does not appear to occur at present. This would lead to increased perception of risk at the least.
- 7.2.123 Taking all the above matters into account I consider that the Secretary of State should be aware 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 and/or access their properties, however, some could be dealt with through compensation and detailed design matters.

#### **SOM 4(b) Impacts on other users**

- 7.2.124 The main identified use was public leisure use. The impacts would relate to matters under SOM 4(e).
- 7.2.125 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.2.22].

#### **SOM 4(c) Impacts on flood risk and drainage**

- 7.2.126 There is no indication that any impacts would arise from this proposal.

#### **SOM 4(d) Any other environmental impacts**

- 7.2.127 No matters were raised with regard to this matter.

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<sup>164</sup> NR32-2, Appendix 8

<sup>165</sup> NR08, Sheet 36

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.2.128 The creation of a field margin route, improving the potential crossing of the road to the south [7.2.12], would be welcome but fails to address the wider issue of the narrow footway alongside Station Road and in particular over the bridge itself [7.2.95], which was the main issue arising [7.2.10, 7.2.35, 7.2.36, 7.2.48, 7.2.50, 7.2.59, 7.2.63, 7.2.96, 7.2.97 and 7.2.112]. The footway was recognised to be below current standards of footway provision [7.2.63] and whilst intimated that CCC would have to take action if the risk was unacceptable [7.2.10] the same situation exists in relation to the rail crossing so far as NR were concerned as agreed in cross-examination.
- 7.2.129 Whilst there may be no indication of accidents on the road [7.2.11] it has been identified locally as an area for improvement [7.2.95]. There have also been no accidents on the crossing itself [7.2.47 and 7.2.93]. In relation to near misses CCC point out that there are far more near misses on roads than on railway<sup>166</sup>.
- 7.2.130 Both cases were not seen as ideal so far as the appropriate expert bodies were concerned; NR on the railway and CCC as the highway authority in relation to the road. There is, unfortunately, no agreed standardised method to compare the risk of road versus rail [7.2.98]. As such it is not unreasonable for the Secretary of State to take account of the perception and experience of actual users of the routes in question [7.2.46, 7.2.54, 7.2.57 7.2.74 – 7.2.75, 7.2.106].
- 7.2.131 NR indicated there was low, albeit regular, use of C04 with more use of the existing footway [7.2.9]. The recorded usage from the nine-day census places the route in the top third of public crossings affected by the Order when ranked by pedestrian and/or NMU use. Whilst the extra use on the footway may be around 10 – 20% [7.2.10] this would move people from a situation where they feel safe to one where they do not [7.2.51, 7.2.61, 7.2.62, 7.2.76, 7.2.84, 7.2.100 and 7.2.111] and would further increase perceived risk due to the higher likelihood of having to pass someone on the footway [7.2.36].
- 7.2.132 Public safety within the industrial estate area was also a matter of concern [7.2.24, 7.2.37, 7.2.69 and 7.2.108].
- 7.2.133 The proposal increases the distance for users [7.2.13, 7.2.49]. I consider this is more significant when account is taken of the fact that this route is a link between the two villages [7.2.38, 7.2.39] and provides access to and from retail facilities to the south [7.2.60 and 7.2.75, 7.2.78].
- 7.2.134 There would also be an effect on enjoyment of the route, moving people from a countryside route to walking alongside an industrial estate and roadway [7.2.34, 7.2.75, 7.2.77].

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<sup>166</sup> OBJ12/29/W23/R, paragraph 3

7.2.135 Taking all of these points into account I consider that the proposed changes are not suitable and convenient so far as existing users are concerned. I do 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.

### **Public Sector Equality Duty**

7.2.136 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 [5.5]. In relation to C04, the scoping rating was Green, which led to the advice that the site could be closed immediately with minimal impact and intervention. This took account of the existing route availability [7.2.20] and the decision was taken that no DIA was required.

7.2.137 CCC advise that changes might affect use [7.2.64], which could lead to less walking and so less health benefits. In this case not only were concerns raised about the use of Station Road but also the industrial estate as discussed above.

7.2.138 Taking all these matters into account, and weighing it in the balance with the issues for users on the level crossing itself [7.2.19], I consider that the Secretary of State should be aware that there are issues with access on the alternative route for all users. This would be the case even taking account of the apparent inappropriateness of the stiles [7.2.65].

7.2.139 It may be that those with some protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population). However, I do not consider the proposed route to provide a suitable and convenient alternative for general users, as set out above.

7.2.140 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 foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I consider that there is a likelihood that the PSED would not be met, and that adds weight to my recommendation not to include this crossing in the Order.

### **Other matters – consultation**

7.2.141 Concerns were raised generally in relation to consultation with a number of comments made in relation to this crossing [7.2.28 – 7.2.33, 7.2.45, 7.2.55, 7.2.72, 7.2.105 and 7.2.114]. NR were satisfied that they had complied with the requirements of consultation<sup>167</sup>. They had removed some crossings from the original proposal<sup>168</sup> as a result of the consultation as well as changing the proposed routes prior to

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<sup>167</sup> NR05, Statement of Consultation

<sup>168</sup> E.g., C18, Munceys

'design freeze', as they did here in relation to the farm track, which had first been proposed [7.2.16].

**Other matters – notices**

7.2.142 Concerns were raised generally about the notices posted regarding the Order, with the greatest number of comments being made in relation to this crossing. I have dealt with the matter generally in relation to statutory requirements [4.24 – 4.26].

**Conclusions**

7.2.143 Taking account of the above, and all other matters raised, I consider that the Secretary of State should not include C04 within the Order.

### **7.3 C07, Harston No. 37**

#### **Description of the Crossing and Surrounding Area**

- 7.3.1 Harston Footpath 4 ("FP4") crosses the King's Cross to Cambridge railway line (SBR) 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.
- 7.3.2 The general surrounding area appears to be farmed land with villages and commercial enterprises and business parks. The M11 runs north-south to the east of Harston and the City of Cambridge is a short distance to the north-east, with access links via the A10.
- 7.3.3 FP4 is a generally unsurfaced path which starts within the village and is accessed by a footway on the A10, High Street. FP4 shares a track used for vehicular access, parts of which are gravel surfaced, and runs generally south-east parallel to a small watercourse between wooded hedges and boundaries. The area to the north-west of the railway line is a wooded copse with a small open field.
- 7.3.4 The unsurfaced path continues south-east of the railway on the field edge. It then runs generally easterly along an uncultivated cross-field area to join the B1368<sup>169</sup>, London Road. Note that to the south of the bridge over the railway line the road is known as Cambridge Road.
- 7.3.5 Shelford Road is a short distance north of the existing route, giving access to the Shelfords. To the north of the London Road bridge is BOAT3, which provides off-road access to and from Hauxton.
- 7.3.6 C07 is a passive footpath level crossing, with wicket gates in the railway boundary fence and SLL signs. The railway has 2 tracks, carrying passenger and freight, with a line speed of up to 90 mph. The ALCRM score for this crossing is C6. There was 1 accident and 1 suicide at this crossing between 2011 and 2015. The June 2016 nine-day survey recorded 29<sup>170</sup> pedestrians using the level crossing, with the busiest day being Sunday 19 June 2016 when 7 pedestrians were recorded.

#### **Description of the Proposal**

- 7.3.7 It is proposed to close C07 to all users, extinguishing the existing public footpath rights. 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.

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<sup>169</sup> Referred to as the B136 in NR's statement of case

<sup>170</sup> Note that the Statement of case refers to 53 people, which is the number recorded for C04. The reported numbers above were within NR25 and Proof of Evidence NR32-1

- 7.3.8 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.
- 7.3.9 A new hoggin path approximately 120m long would be provided in the highway verge between the eastern end of the existing FP4 and the existing hoggin path in the western highway verge.
- 7.3.10 Approximately 175m of FP4 to the north of C07 would be extinguished. The continuation of FP4, approximately 500m in length, to the south of the crossing, leading to London Road would also be extinguished.
- 7.3.11 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.

## The Case for the Applicant, Network Rail

- 7.3.12 The provision of substantial lengths of new off-road walking constitute a wider benefit in terms of access to the wider PROW network. To the north of the railway, the proposed route would use an existing permissive footpath, which would be formalised under the Order, incorporating it into the local PROW network.
- 7.3.13 At London Road users would cross to the east, joining a new field margin footpath. At present, walkers travelling east on BOAT3 have to walk in the carriageway. One user's dog was killed on this walking route – a situation which would be avoided under the Order scheme. The new field margin path was supported in principle by CCC.
- 7.3.14 At the existing road bridge, users would use new steps to road level, cross the road, which CCC confirmed as suitable and the appropriate location for such a crossing, and then use steps west of the road to join a new field margin path. The new path would continue south, on the highway verge, where it would connect to the longer distance hoggin path continuing south to Newton.
- 7.3.15 The main complaint related to the stepped access, with concerns that users may be unable to manage steps and so enjoy the proposed route. This issue was recognised in the DIA<sup>171</sup>, which states that *"The implementation of a permanent diversion which includes stepped access may disproportionately affect certain sections of the population who find walking long distances and/or navigating steps difficult."*
- 7.3.16 Whilst recognising the concerns, they are not a reason to reject the proposal as the proposed steps would meet "inclusive design" requirements, incorporating the gradient, rises and resting places of a footpath bridge designed to modern standards. To that extent they would be the same as suggested by the Ramblers for the crossing. A ramped solution would be impractical as it would be a significant engineering operation requiring substantial land take.
- 7.3.17 A secondary complaint relates to the loss of a pleasant wooded route to the north of the railway. This is undoubtedly a nice walk but the unaffected route to the north is also tree lined. The proposed diversion route, whilst more open, is in countryside and therefore not materially less pleasant than the current route.
- 7.3.18 The proposed route is not significantly longer than the current route and NR believes that it is convenient and suitable for existing users.
- 7.3.19 With regard to OBJ 25 there was no objection in principle to the proposed route running to London Road and temporary use of land. In relation to matters raised regarding disruption to farming activity NR would continue to engage with the landowners and/or their representatives to see how issues may be addressed. There would be an opportunity to look at mitigation at the detailed design stage<sup>172</sup>.

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<sup>171</sup> NR-INQ-18, Diversity Impact Assessment, C07 No. 37, 31032015

<sup>172</sup> NR-INQ-12

- 7.3.20 With regard to concerns that notices were served inaccurately NR has confirmed that all notices were served correctly and in line with the relevant statutory requirements during development of the proposal.



## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

7.3.21 FLUG supports the closure/alteration of 14 crossings<sup>173</sup> within the Order, including this crossing.

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<sup>173</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## **Representations**

### **Harston Parish Council (R1)**

- 7.3.22 The Parish Council supports the closure on the grounds of safety. However, the public footpath is used by considerable numbers of walkers and is seen as an important community asset. The Parish Council request that the proposed route is constructed and fully operative before the level crossing is closed.

## The Cases in Objection

### Janet Lockwood (R2)

- 7.3.23 Councillor Lockwood was an interested person in her own right but gave evidence to the Inquiry as part of CCC's case. Her initial comments were treated as a representation, but she now supports CCC and objects to the proposal.
- 7.3.24 Councillor Lockwood is a retired consultant radiologist and have been South Cambridgeshire District Councillor for Harston and Hauxton from 2000 – 2004 and 2006 – present day. She has also been the Parish Councillor for Hauxton since 2000. Councillor Lockwood makes representations on behalf of residents and act as a conduit to air concerns, as well as keeping people informed about relevant matters.
- 7.3.25 The provision of information and consultation by NR throughout the process has been insufficient. District Councillors were not kept up to date which made it difficult to respond. A number of residents raised concerns and the lack of information made my job difficult. Councillor Lockwood attended the public exhibition in June 2016 and completed an online response in July 2017 but felt that NR did not seem to take account of her comments and so she made an objection to DfT
- 7.3.26 In consultations NR pointed out proposals were largely safety based and their Statement of Case mentions safety more than any other issue. Initially Councillor Lockwood thought NR were saying that C07 was an unsafe crossing and so thought it should be closed. NR have backtracked from the initial safety argument and are now basing it on an asset reduction strategy. As C07 is seemingly not a particularly dangerous crossing she does not see why the residents of Harston should lose an important right of way to assist NR in asset reduction.
- 7.3.27 Councillor Lockwood walked her dogs from Donkey Lane (BOAT 3), crossing London Road and then west on the informal footpath along the field-edge north of London Road to Harston, twice a week from 2004 – 2010. The rights of way in the area are popular with pedestrians, cyclists, dog walkers and joggers, many using C07 regularly.
- 7.3.28 The proposal would place users on London Road, which is dangerous with traffic travelling too fast and poor sightlines at key areas, such as the crest of the bridge. People would have to cross London Road twice, which is less safe than the current rail crossing. The steps would make it more difficult for people with pushchairs and other disabilities. Even a ramp would be more difficult. There is no pavement on London Road and the verges are rutted and not suitable.
- 7.3.29 The proposal could be an opportunity for a utility link between Harston and Newton, but this would serve a different purpose than the current country path; the proposal does not achieve this. The route over the crossing provides connectivity for Hauxton, Harston and Newton and closing it would contribute to severance of these rural communities.

**Jill Tuffnell (O5)**

- 7.3.30 Ms Tuffnell was an interested person in her own right but gave evidence to the Inquiry as part of the Ramblers' case.
- 7.3.31 I am a long-term resident of Cambridge. I have been a keen walker since 1976 when I joined Cambridge Rambling Club and a member of the Ramblers for over 30 years.
- 7.3.32 There is value in the section of FP4 north of the railway line as it runs through a tree-lined track and adjacent woodland, of which there is little available in Cambridgeshire. The proposed diversion alongside an existing well-used informal path following the ditch/field edge to London Road is not objected to.
- 7.3.33 A safe, readily accessible off-road pedestrian route should be available to link to the current junction of FP4 with London Road/Cambridge Road. Here a good off-road hoggin path runs on the wide verge south to Newton village where there are links with other PROWs. However, the proposed link is neither safe nor convenient. The incorporation of two steep, long flights of steps effectively makes the new route unusable by many walkers with even slight physical disabilities and totally unusable by anyone pushing a buggy.
- 7.3.34 The first section alongside London Road to the junction with the Byway to Hauxton (The Lane) could use the quite wide verges on either side of the road. However, on the east side of the carriageway there are several cross drains in the grass. NR's proposals involve crossing London Road which carries significant amounts of traffic travelling at speeds up to (or above) 60 mph.
- 7.3.35 South of the junction with the BOAT NR propose to create a footpath alongside the field east of the road. As the road rises to form a bridge over the railway line, the adjacent field remains 'at level' and so there is a significant difference in height between the field and the bridge at which NR propose to erect a flight of steps. There is already a flight of steps for NR's access to the bridge for maintenance purposes. This appears to involve 20 individual steps, which presents a major obstacle to many pedestrians.
- 7.3.36 On London Road walkers are expected to cross the road and proceed south over the bridge. On the south side of the bridge the new pedestrian route is to go down a new set of steps to the field on the west of Cambridge Road (assuming that the railway is the division between London Road (north) and Cambridge Road (south)). The difference in levels between the road and the field is difficult to gauge; however, it is likely to involve at least 20 steps, presenting another set of obstacles to anyone with balance problems or with a buggy. The vegetation would require regular cutting back if it is not to encroach on the proposed steps.
- 7.3.37 In the alternative the verge on the north side of the railway bridge, on the west side of London Road, is very narrow in places and beyond the hedge the land falls away very steeply so there is not an option

to increase the verge width. With fast traffic and a blind summit over the railway bridge, this is not a viable option. The verge on the east of London Road, north of the railway bridge, is wider but this involves making a double crossing of a road with fast traffic. South of the railway bridge the verge on the west of Cambridge Road is narrow.

- 7.3.38 NR's proposed diversion to Harston FP4 involves a dual crossing of the busy, fast London Road/Cambridge Road route, with two steep and long flights of steps and on-going maintenance issues relating to verges and hedges. It would be much easier to construct a flight of steps at an easier gradient over the existing level crossing. Alternatively, the current safety issues would be more easily dealt with by provision of warning lights, such as are provided at Shepreth, together with the non-slip boarding across the rails.

### **Cambridgeshire County Council (O12)**

- 7.3.39 Time was spent discussing the pros and cons of ramped access to the road bridge; however, this is not the proposal before the Inquiry. NR confirmed there was no intention to undertake such works.
- 7.3.40 CCC's view is that a very enjoyable walk, partially through a wooded area, would be lost and replaced predominantly by a route alongside the public carriageway. This would have a significant detrimental impact on the recreational value of the footpath.
- 7.3.41 In terms of convenience, the proposed route would require walkers to cross public carriageways on a number of occasions, introducing potential conflict between motor vehicles and vulnerable road users. The existing route is traffic free, so far as motor vehicles are concerned, and involves a single crossing of the railway at a crossing which is open and therefore safe and fit for purpose. It would be necessary for the Secretary of State to weigh up the level of risk faced by the walking public in using multiple public carriageway crossings, against the single crossing of the railway.
- 7.3.42 In terms of the convenience of the alternative route walkers would need to ascend and descend two flights of steps to cross the railway via the road bridge. These steps would undoubtedly be less convenient than the relatively level surface of the existing route and form a barrier to certain classes of user. They would have a significant negative impact on the convenience and suitability of the alternative route.

### **Robin Clarke, Strutt & Parker on behalf of Brigadier William Hurrell and Mr Henry Hurrell (O25)**

- 7.3.43 Although forty letters were received from BK, agents for NR, enclosing notices of applications to temporarily use land and acquire rights, these were incorrectly addressed. Strutt & Parker do not believe that the notices reflect the reality and what appears to be a conflict between temporary and permanent acquisitions.
- 7.3.44 An alternative route is available, causing less disruption to farming practices and probable mitigation of compensation. This alternative

route would utilise the extensive public highway verge of London Road. The local community would be able to use this to walk from Harston to Shelford Road.

- 7.3.45 It has been frustrating not to be able to meet with BK on site until formally instructed by NR.

### **Ramblers Association (O26)**

- 7.3.46 The Ramblers do not object in principle to the closure of this crossing, but a better solution should be found. The proposed closure removes a pleasant country path and replacing it with an unsuitable and inconvenient route, primarily because of the need to negotiate two sets of steps. Even steps constructed to the 'appropriate' standard present an insurmountable barrier to some users. NR has improved the original proposal by relocating parts of the proposed alternative route away from the roadside verge and into adjoining fields.
- 7.3.47 The longer, circuitous route with two road crossings and two flights of steps is unacceptable as a replacement for the current step free, direct route through woodland and across an open field. The proposed alternative is unsuitable and inconvenient.
- 7.3.48 The area around Harston has few paths and this provides the only direct off-road route between Harston and Newton. The introduction of steps would present a problem for people with mobility issues and those with buggies. The current route has no such obstacles and could be more readily used, particularly before NR changed the wicket gates (seen in September 2015) at the crossing to kissing gates.
- 7.3.49 NR accepted in cross examination that the introduction of steps rendered the proposed route less convenient to the public than the current route. It was also accepted that if the current proposal failed, NR would consider installing a bridge at the current crossing site to provide a grade separated crossing.
- 7.3.50 Ms Tilbrook accepted that the proposed new route was less convenient for users who had issues with steps and that steps posed a problem for people with respiratory issues.
- 7.3.51 It appears that the DIA carried out to assess the potential impacts of the proposal relied on a general evidence base consisting of (i) the 9-day census; the (ii) existing census data for South Cambridgeshire; and, (iii) a consideration of "local amenities", which considers "places of importance to people" situated within 2km of the crossing.
- 7.3.52 This evidence base is inadequate. Reliance on broad census data for South Cambridgeshire (evidence base (ii)) provides little detail as to who is likely to be affected by this proposal.

- 7.3.53 The 9-day census (evidence base (i)) only provides a snapshot. Those who have non-physical disabilities<sup>174</sup>, or disabilities that are not outwardly visible (for example, pulmonary disabilities), would not be documented by the 9-day census and so the potential scale of any impact does not appear to have been appropriately considered.
- 7.3.54 The DIA states on p.10 in relation to the potential negative impacts on persons with a disability:
- However, as the kissing gates presently make the crossing inaccessible to most mobility impaired people and there were no visibly disabled people documented using the crossing during the nine-day survey period, the realisation of both positive and negative impacts for this group is likely to be limited; the baseline situation will not change significantly for disabled people.” (Emphasis added.)*
- 7.3.55 Focus on local amenities (evidence base (iii)) is a blunt tool for assessing who may be affected. It undervalues the benefits of walking for walking’s sake and would likely underestimate the numbers of users who may be using the crossing for such purposes.
- 7.3.56 Whilst the DIA refers to consultation responses in “Step 4” it is stated at the outset of this section that the “views are not necessarily received from or relevant to those who share a protected characteristic”. This undermines any reliance that can be placed on the consultation process to provide a further evidence base.

### **Cambridge Local Access Forum (O52)**

- 7.3.57 The route provides an off-road route between Harston and Hauxton villages, as well as Harston and Newton, using a relatively new hoggin path on the verge alongside the B1368, London Road. The railway line is busy with frequent fast trains and it would be desirable to create an alternative to avoid the level crossing unless lights for pedestrians, as at Foxton or Shepreth, could be provided.
- 7.3.58 There are problems with the current proposal as there is only a narrow footway over the road bridge and no off-road footways or verges on the bridge approaches. The steps up and down to the bridge would create access problems for people with limited mobility. The large new housing estate in Hauxton would create new pressure on this inter-village link. It should have the highest rating in accessibility.

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<sup>174</sup> Disability is defined in section 6 of the Equality Act 2010 as:

(1) A person (P) has a disability if—  
(a) P has a physical or mental impairment, and  
(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.3.59 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. The proposed route would follow generally similar field-edge locations and discussions regarding any further need for mitigation would be included at the design stage [7.3.19].
- 7.3.60 Whilst there was discussion over use of the roadside verges [7.3.33 and 7.3.44] the Inquiry evidence<sup>175</sup> indicated the difficulties in utilisation of the roadside verges to a greater extent than as proposed [7.3.9]. The issues arising relate to the width of the verges and the negative comments made in consultation from users and CCC regarding the proximity to traffic [7.3.37].
- 7.3.61 There do not appear to be impacts in this respect which could not be dealt with through detailed design and compensation.

### **SOM 4(b) Impacts on other users**

- 7.3.62 The main identified use appeared to be public leisure use. The impacts would relate to matters under SOM 4(e). Harston Parish Council supported the closure on the basis of safety but raised concerns about the availability of the proposed route prior to closure of the existing [7.3.22]. The Order would provide for this at paragraph 14; where level crossings would be closed subject to the opening of a new highway any rights of way over the crossings would only be extinguished once the new highway had been constructed and completed to the reasonable satisfaction of the highway authority and was open for use.
- 7.3.63 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.3.21].

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.3.64 There is no indication that any impacts would arise from this proposal.

### **SOM 4(d) Any other environmental impacts**

- 7.3.65 No matters were raised with regard to this matter. The proposed hoggin path on the verge to the west side of London Road [7.3.14] would lead to some removal of vegetation. Whilst this would have some effect

<sup>175</sup> Direct evidence and cross-examination of Sue Tilbrook



there is no indication that there are species of environmental concern in this relatively small area, which is already part of a managed verge.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.3.66 The main issue arising related to the steps required for access to and from the London Road bridge [7.3.14, 7.3.28, 7.3.35, 7.3.36, 7.3.42, 7.3.46, 7.3.49 and 7.3.58]. Although there was much discussion at the Inquiry regarding the possibility of a ramp or steps on the existing route, or the provision of improved safety features [7.3.38, 7.3.57] this was not the matter before the Inquiry [7.3.39].
- 7.3.67 The issue of steps was recognised in the DIA [7.3.14], 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 should note that, as at other crossings<sup>176</sup>, it appears that NR, or another party, has altered the access, e.g. from pedestrian gates to kissing gates or stiles, without permission from the highway authority. As a result, users may have been denied access to which they were entitled, prior to any census of 'current use' [7.3.48].
- 7.3.68 The DIA, and CCC, did not identify this route as lying within an area where there were particular equality groups, over and above the national average figures, likely to be disproportionately affected by the proposal. The current user profile and availability of the alternative route was found to be appropriate in the DIA.
- 7.3.69 The steps would be designed to be as accessible as possible, with uniform steps and treads of appropriate height and length. Resting landings would be provided for every 1.2m flight and the steps would have a slight cross-fall to shed water. The existing NR maintenance steps would not be used as part of the proposed route [7.3.14 and 7.3.35].
- 7.3.70 It was accepted by NR in cross-examination that the steps would be likely to stop some people using the route. However, the DIA reasonably 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. The steps are not ideal but are not unreasonable in this circumstance [7.3.16].
- 7.3.71 The proposed route would mean that users would cross the London Road twice – on the edge of the village and on the London Road bridge – rather than crossing the railway once [7.3.34, 7.3.41 and 7.3.47]. It was agreed in cross-examination of CCC's Road Safety Engineer that the bridge crossing point was not unreasonable [7.3.14]. There were improvements to the proposed routes to be dealt with in detailed design, such as signs and the incorporation of dropped kerbs and tactile

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<sup>176</sup> e.g., C25 and C11

paving. At RSA stage 2 it may be that further required works would be identified.

- 7.3.72 In relation to the potential loss of part of the route to the north of the railway line [7.3.32, 7.3.40 and 7.3.46] the countryside continuation north to High Street, Harston, would remain unaltered. The north-eastern addition to London Road is on field edge, alongside trees and the proposed sections to the north-east of London Road would be within fields on the other side of existing hedges.
- 7.3.73 The proposed route would provide a link to BOAT3, Donkey Lane, which then also links Harston and Hauxton [7.3.13 and 7.3.27]. The development of Hauxton would be likely to lead to increased need for such off-road links [7.3.58]. The links to the Shelfords and Newton would be available on the proposed route [7.3.29, 7.3.33 and 7.3.57] and the proposed route would not be significantly longer in this respect.
- 7.3.74 Taking all of these points into account the introduction of the steps and road crossings would not be ideal. However, there would be a side benefit in providing a safer off-road link between Harston and Hauxton.

### **Public Sector Equality Duty**

- 7.3.75 The criteria set out in the PSED section<sup>177</sup> were used in the scoping exercise to inform the decision-making process about which crossings would require a DIA. In relation to C07, the scoping rating was Green, which led to the advice that the site could be closed immediately with minimal impact and intervention. However, in the Equality and Diversity Overview<sup>178</sup> it was noted that, although the current crossing may restrict accessibility for some people, the presence of steps on the proposed diversion route would further limit the ability of some users (especially those in wheelchairs or with pushchairs) to navigate the route. As a result, it was suggested that a full DIA evidence gathering process be carried out.
- 7.3.76 CCC and the Ramblers advised generally that changes to the rights of way network might affect use, which could lead to less walking and so less health benefits. In this case the attractiveness of the existing route was identified [7.3.40]. The Ramblers raised concerns with regard to the evidence base and reliance that could be placed on the resulting DIA as a result [7.3.51 – 7.3.56].
- 7.3.77 Taking all these matters into account and weighing it in the balance with the improvements for users on the level crossing itself<sup>179</sup>, I consider that the Secretary of State should be aware that there are issues with access on the alternative route. 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. It is likely that those with particular 'non visible' protected characteristics [7.3.53] would be disproportionately affected (over and above the effects likely to

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<sup>177</sup> Section 5 of this Report

<sup>178</sup> NR-INQ-18, Ref 367516 | RPT195 | C, October 2017

<sup>179</sup> See for examples Q2 & Q4 of DIA

be experienced by the rest of the population). Whilst there would be safety improvements for users in removing them from the crossing the proposal introduces three road crossings.

- 7.3.78 The evidence indicates reduced access would arise for those with mobility impairments and other 'non-visible' characteristics, such that including the crossing in the Order would fail to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I consider that there is a likelihood that the PSED would not be met, and that adds weight to my recommendation not to include this crossing in the Order.

### **Other matters – consultation**

- 7.3.79 Whilst NR were keen to say that safety was not the driving force it was clear that this was not what was understood by those involved in the consultation process [7.3.25 and 7.3.26].

### **Conclusions**

- 7.3.80 Taking account of all above, and all other matters raised, I consider that the Secretary of State should not include C07 within the Order as the proposed route is not a suitable and convenient alternative.

## **7.4 C10, Coffue Drove**

### **Description of the Crossing and Surrounding Area**

- 7.4.1 Coffue Drove is recorded as BOAT 44<sup>180</sup> and situated to the east of the village of Little Downham. It runs north from BOATs 44 and 48 to BOAT43, crossing the Ely to Peterborough railway line (EMP).
- 7.4.2 The crossing is a user worked crossing with a telephone (UWCT). The railway at this crossing comprises 2 tracks, carrying passenger and freight, with a line speed of up to 75mph. The ALCRM score is C9 and in February 2017 there was an incident of misuse.
- 7.4.3 The immediately surrounding land is ditched and farmed fenland with individual farms, properties and minor roads. The small village of Chettisham lies to the south, with the City of Ely directly south again, but they can only be reached by crossing the A10. The larger village of Littleport lies to the north-east, again separated from it by the A10.

### **Description of the Proposal**

- 7.4.4 It is proposed that the Order would confer powers to close the crossing, extinguishing the existing public rights. From the feedback during the first round of public consultation 3 people used the route weekly, 1 fortnightly, 3 monthly and 2 rarely. 7 of these were using the route for leisure purposes, whilst 1 used it to access their own property and 1 used for commuting.
- 7.4.5 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. The BOAT would have a width and height limitation through the underpass, with signing provided to indicate the limitation. Mounting blocks would be provided on both sides of the railway to allow horse riders to dismount safely before using the underpass.
- 7.4.6 Large vehicles which would be unable to use the underpass. There is an alternative along the existing BOATs to Beald Drove level crossing, on BOAT43, to the northwest. This level crossing has an ALCRM score of C6.
- 7.4.7 Crossing infrastructure would be removed and fencing would be installed to prevent trespass onto the railway.

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<sup>180</sup> Note that NR had incorrectly referred to this as BOAT 41 at places in the draft order. This has been rectified in the filled order

**The Case for the Applicant, Network Rail**

- 7.4.8 No objections were received. Reliance is placed upon the statement of case, which sets out the Order proposals above.
- 7.4.9 The Order would confer powers to close the level crossing to all users and extinguish existing public rights of way over the crossing. Users would be diverted to either a proposed BOAT on an existing private track to the underpass immediately to the northwest, or along existing BOATs to Beald Drove level crossing to the northwest.
- 7.4.10 The removal of the public rights over the level crossing would meet the strategic aims of the Order.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.4.11 One person indicated use to access property [7.4.4], although there was no further information as to whether this was for business purposes. As there has been no objection to the proposal to close the crossing [7.4.8] it is reasonable to assume that users were content in relation to the proposed provision.
- 7.4.12 There was evidence of current use of the proposed route through the underpass, although unknown whether this was connected to the public use of BOAT44 or private use in connection with the land. It appears that the overall effect of the proposed changes should be minimal.

### **SOM 4(b) Impacts on other users**

- 7.4.13 The main identified use appears to be non-motorised public leisure use [7.4.4]. CCC indicate<sup>181</sup> that there is a seasonal TRO prohibiting access along BOAT 44 to public motor vehicles with more than two wheels between 31 October and 1 April, or when the barrier is closed. Motorcycles and bicycles are permitted to use the route in this period. Whilst I observed evidence of bicycle use there was no sign of any other vehicular use at the time of my site visit in early September. The impacts would relate to matters under SOM 4(e), which will be discussed below.
- 7.4.14 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network.

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.4.15 No evidence was submitted to suggest any impact on flood risk or drainage in this area. As noted, the proposed route is already in use.

### **SOM 4(d) Any other environmental impacts**

- 7.4.16 No matters were raised with regard to this and the proposed route is already in use. As a result, it would be unlikely that any new impact would arise.

### **SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.4.17 The alteration is minimal in terms of distance and appears to already be a preferred route for some users. For vehicular users there may

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<sup>181</sup> OBJ/29/W6/R – Camilla Rhodes

be a greater distance to travel, via Beald Drove, as the underpass is limited in height and so not capable of accommodating large vehicles. However, the diversion is not of such significant distance that it would be likely to be unsuitable to users.

- 7.4.18 Non-motorised use would be well catered for by the underpass and there would be improvements with the provision of mounting blocks [7.4.5].

### **Public Sector Equality Duty**

- 7.4.19 No DIA was carried out following scoping of this proposal. I consider that the impact of additional travel for motorised users would be unlikely to be felt disproportionately; everyone affected would be affected in the same manner regardless of any protected characteristics.
- 7.4.20 NMUs would be diverted by a short distance to the underpass. As this is such a short distance, it would be unlikely to lead to any disproportionate impact. It has been noted that the proposed route already appears to be the preferred route for some users.
- 7.4.21 I consider that the Secretary of State can be satisfied 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). The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Conclusions**

- 7.4.22 Taking account of all above, and all other matters raised, I consider that the Secretary of State should include this proposal within the Order.

## **7.5 C11, A Furlong Drove<sup>182</sup>**

### **Description of the Crossing and Surrounding Area**

- 7.5.1 BOAT 33 runs along A Furlong Drove in a north-west – south-east direction and crosses the Ely to Peterborough railway line (EMP) at about the halfway point of the BOAT. The long distance promoted route the Hereward Way<sup>183</sup> runs along A Furlong Drove. Ash Tree Farm is located partway along the northern section of BOAT 33. To the north of the railway Footpath 8, ("FP8") runs generally east – west to Main Drove via Quaker Farm.
- 7.5.2 A public road, Main Drove, runs parallel to BOAT 33 to the east with the Thirty Foot Drain to the west and, further west again, Furlong Drove, recorded as BOAT34. The railway cuts through all these features. O Furlong Drove is a public road running generally east – west to the south of these features. The Hereward Way uses this road to join Footpath 22 ("FP22") and continue in a southerly direction. The roads Straight Furlong and Short Drove are situated at the northern end of the droves.
- 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. There are SLL signs and the railway at this crossing comprises 2 tracks, carrying passenger trains, with a line speed of up to 75 mph.
- 7.5.4 The ALCRM score at this crossing is C6. A 9-day camera census between 18 and 26 June 2016, recorded 6 pedestrians using the crossing whilst an ALCRM census in March 2017 recorded 2 users.
- 7.5.5 The general surrounding area is ditched and farmed fenland with the New Bedford River, or Hundred Foot Drain, and the Hundred Foot Washes limiting access routes to the north-west. The nearest village is Little Downham to the south, with the larger village of Littleport to the east. The City of Ely lies to the south-west.

### **Description of the Proposal**

- 7.5.6 It is proposed to close C11 to all users, extinguishing the existing public right of way. 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. Users could travel south via Third Drove level crossing, which has automatic half barriers and an ALCRM score of D4.
- 7.5.7 To the south of the railway users would continue on O Furlong Drove to the west and then on a new 3m wide unsurfaced bridleway, approximately 660m in length, created on the field edge to avoid use

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<sup>182</sup> The route was referred to as Furlong Drove in the statement of case. I understand that locally the route is known as A Furlong Drove, with Furlong Drove being the parallel route to the west, BOAT34 and O Furlong Drove being the road to the south and following around Dunkirk Corner to join Furlong Drove.

<sup>183</sup> Core Documents CCC, Bundle 1, Document 45



of Dunkirk Corner, to join BOAT34, crossing the railway using Straight Furlong underbridge.

- 7.5.8 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.

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## The Case for the Applicant, Network Rail

- 7.5.9 The proposed closure relates to a BOAT, although in practice for many years the crossing infrastructure would not permit a four-wheeled vehicle to cross the railway. This has been unchallenged for many years and the Inspector should proceed on the basis that any provision for "existing users" need not address four wheeled vehicles.
- 7.5.10 NR believes the suggestion that the proposed new bridleway created to the north/west of the railway should be a BOAT, to permit trail riders, to use the route would be unnecessary and an unreasonable burden on the landowner. Trail riders can cover significant distances in their rides as said in their evidence, called by CCC. There is an extensive network of unsurfaced routes and lightly trafficked roads which can be used in the vicinity. These users do not need alternative provision since they can use, for instance, BOAT 34.
- 7.5.11 It is not the case that equestrian users would be denied a long gallop: they can gallop as before, since they are only diverted at the crossing itself where they would at present have to dismount. Provision would be made for them with diversion routes both north and south of the railway. The surrounding road network is suitable for equestrians and used by them in practice now.
- 7.5.12 Concern was raised by the Ramblers in respect of the impact on the Hereward Way. This long-distance route can be accommodated readily through the diversion, with little additional distance. Walkers can use BOAT 34 in place of BOAT 33. The local rights of way officer did not raise any concern about this issue.
- 7.5.13 Users would be diverted to Main Drove, but this is a wide road with opportunities to walk in, or step into, the verge. No road safety issue was identified here.
- 7.5.14 Concern was raised by the landowners, and latterly CCC, about the diversion route south of the railway, to provide a connection between FP 22 and BOAT 34. This bridleway route was introduced because CCC were concerned about equestrians riding round "Dunkirk Corner". It does impact on landowners, but NR maintain it makes appropriate provision for existing users. Drainage pumps and pipes could be accommodated through, for example, the provision of pipes beneath the bridleway.
- 7.5.15 NR's letter to the IDB dated 29 September 2017 explained the disapplication under the proposed TWAO of section 23 (prohibition on obstacles in watercourses) of the Land Drainage Act 1991, and the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act which require consent or approval for the carrying out of the works as well as their replacement by substitute provisions for the protection of drainage authorities (and the Environment Agency (EA)) within the Order, which include arrangements for approval of plans by the drainage authority before the works authorised by the Order can commence.

- 7.5.16 NR refutes the suggestion that its consultation with the IDB has been poor. Where there are multiple land interests, NR has sent notices in accordance with the statutory requirements. NR remain happy to talk directly as detailed design of the proposals is worked up.
- 7.5.17 The Order would provide in-principle consent for the creation of a new field edge, unsurfaced, bridleway at this location. NR believes that the regular, but infrequent, maintenance activities carried out by the IDB would not be impeded by the presence of the bridleway; and that such activities can be safely carried out given the relatively low level of anticipated usage. Arisings from weed cutting and ditch clearance can be deposited on the field side of the bridleway or the ditch embankments as currently occurs.
- 7.5.18 If the view was taken that the additional diversion route was unnecessary, this would not be an impediment to the Order: that section of bridleway could be omitted, and users could use the road around "Dunkirk Corner" towards BOAT 34.
- 7.5.19 Concern was raised about the view of Ely Cathedral. The Order proposals would not interfere with that view, which can be enjoyed through the retained sections of BOAT 33. There are many spectacular views of the Cathedral across the fens.

## The Cases in Objection

### Jill Tuffnell (O5)

- 7.5.20 This is an off-road route between Little Downham and Welney and part of the Hereward Way, a long-distance promoted route. Walkers would be diverted onto the road Main Drove to the east, which has no off-road footway and requires use of another at grade level crossing at Third Drove. The proposed diversions to the west, on a new bridleway and Byway 34, or east, are longer than the existing route; the west 1.15 kilometres and east 0.9 kilometres, more than 2 kilometres of which would be on road. Both are unacceptably long and inconvenient.
- 7.5.21 The railway line is lightly used with no recorded accidents or incidents at this crossing. NR may be supported in closing the crossing to vehicles but not to walkers, for whom there are excellent sightlines.

### Cambridgeshire County Council (O12)

- 7.5.22 CCC do not believe that the crossing should be closed. However, if the alternative route located to the north of the crossing was to be designated as BOAT, subject to a Traffic Regulation Order (TRO) to restrict mechanically propelled vehicles to motorcycles, this would address the lack of facility being proposed for the existing use by Trail Riders.
- 7.5.23 NR confirmed in evidence that the crossing must be deemed safe (fit for purpose) as it was open, albeit unlawfully obstructed to certain users. Sight lines exceed minimum requirements; there are no speed restrictions in place; and, no evidence of incidents on the crossing.
- 7.5.24 Closure would have a significant impact on the use and enjoyment of the route. Whilst most of the route would be still legally available, it would amount to the loss of the route, especially in terms of the southern section of the route which would become a cul-de-sac. This is of concern given the uniqueness of this route and the astonishing and breath-taking views of Ely Cathedral.
- 7.5.25 Any assessment of the nature and extent of the existing use must be treated with caution because for the last 20 years or so legitimate users, i.e., 4 wheeled vehicles, have been prevented from using it by the applicant for the Order, NR. The fact that the unlawful obstruction has gone unchallenged is no defence or excuse. Certain users, who may have desired to use the route but were aware of the long-standing obstructions, have had to use alternatives, as evidenced by horse rider Alison Arnold, who had found the gates locked on a couple of occasions and thereafter that did not try to use the route. The nature and extent of potential use is impossible to quantify but cannot be ignored. The situation is analogous to public path orders where temporary circumstances, such as obstructions, must not be taken into account as part of any assessment<sup>184</sup>.

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<sup>184</sup> OBJ-12-INQ-09

- 7.5.26 The existing route has been open to use by pedestrians, cyclists, equestrians and motorcyclists, yet the proposed alternative route, to the north of the crossing, does not facilitate the motor cycles.
- 7.5.27 Motor cycle users, or Trail Riders, would be expected to use more of the ordinary public carriageway network, although this is what they seek to avoid. The enjoyment of their hobby is the technical challenge of riding along unsealed and unsurfaced public carriageways and riding on tarmacked roads defeats the object of their recreational journey. The configuration of their vehicle, i.e. the types of tyres etc., is set up for riding on unsurfaced routes, which itself makes riding on sealed surfaces that bit more hazardous and less enjoyable.
- 7.5.28 It is not sufficient to say that Trail Riders can still use the route as far as the crossing, then turn around and retrace their steps, and therefore their use of the route may continue. The route would not be used in this manner and the closure of the crossing without alternative provision will result in it not being used at all.
- 7.5.29 NR sought to emphasise that motorcycle users include routes such as Downham BOAT33 as part of much longer journeys of 70 to 100 miles, which include riding on the ordinary carriageway network. This may be true, due to the necessity of having to travel between the types of routes from which they derive their enjoyment, but NR have provided no data to clarify the percentage split between what may be described as on-road and off-road routes used in these journeys. Without this data it is not possible to ascertain the impact that the crossing closure will have on this class of existing user. It is submitted that NR have failed to undertake sufficient assessments to provide objective commentary on whether or not this existing class of user is adequately catered for within the proposals.
- 7.5.30 In relation to the proposed new bridleway to the south of the crossing, whilst the principle of keeping vulnerable road users away from normal vehicular traffic is accepted, this proposal falls short of what might have been achieved. CCC's preference would have been a direct link between BOAT 33, starting somewhere near the railway crossing, and BOAT 34. Such a link is likely to have had less impact on agricultural operations than the proposed route and would mean that the southern section of BOAT No 33 would still have been available as a through route. There would have been a need for a bridge over the drain, but CCC would have been prepared to accept future maintenance liability for such a structure.
- 7.5.31 The proposed alternative route runs around two sides of a field and on one of these sides runs parallel to a deep drainage ditch. CCC believes that there is insufficient width along this stretch of the proposed route to allow safe passage. The evidence of the landowners that diesel powered irrigation pumps are operated in the immediate vicinity of the route would not be conducive to equestrian use.

- 7.5.32 CCC's PROW Officer, Karen Champion, gave evidence that the proposal would have a significant impact on the rights of way network and local community.
- 7.5.33 Mrs Taylor gave evidence surrounding the incorrect service of notices. NR submitted that where there was an interest in land and that party was aware of the proposals and have attended the Inquiry, so there was no prejudice. The Secretary of State must decide whether this excuses non-compliance with the notice serving requirements, or whether this alone is reason not to proceed with this proposal as part of the current Order.

**Mr B L Taylor (O16)<sup>185</sup>**

- 7.5.34 The proposed bridleway to the south is not close to the railway level crossing, does not connect to any other right of way and so would not be an alternative to the existing route. Two bridges would be needed, which would cost thousands of pounds. The route would still connect to public highways at either end, rather than rights of way. The state of the existing level crossing means that only walkers can use it; there is no need for an alternative for vehicle drivers and horse riders.
- 7.5.35 The proposed bridleway would not connect back to BOAT 33 and so would be new and completely disconnected; this differs from all the other proposals. If connectivity is important, the alternative should begin at the crossing and go across fields to connect directly to BOAT34. At the moment BOATs 33 and 34 do not directly connect but have highways at either end. The proposed use of verge at the western end, Pymoor Corner, is too narrow for a bridleway. There are signs for the safety of drivers that would have to be moved.
- 7.5.36 As there are two alternative rail crossings available, horse riders and walkers do not need to use Dunkirk Corner, making a long route around the fields unnecessary. Another alternative would be a shorter route at the back of the new buildings on the corner.
- 7.5.37 Although a cul-de-sac, BOAT33 would still be available to use as only the crossing would be closed. If a horse rider wanted to gallop the length of BOAT33 they would have to dismount to cross the railway. The route would still be available for galloping and so there would be no loss of amenity, only a short length over the railway. NR noted that no horse riders or bikers objected to the closure.
- 7.5.38 There are deep drains at the sides of the fields, and it would be dangerous to gallop horses next to them, particularly if large farm or irrigation equipment was being used at the time. The irrigation equipment and noisy pumps are not manned whilst in use so would cause distress and frighten horses, as well as possibly wet passers-by.
- 7.5.39 Multiple field access points are not desirable as trespassers have driven across fields, threatening us, killing wildlife and damaging crops. Easy

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<sup>185</sup> Mrs Taylor also presented evidence to the Inquiry

access would make it easy for them to avoid the police. This is an unnecessary burden on the landowners.

- 7.5.40 No one has complained about the existing available routes and there has not been an accident involving walkers or horse riders on O Furlong Drove/Road. There is an equestrian centre, riding school and stables about 400 yards from Dunkirk Corner and riders use the road without problems. The crossing closure has no relevance to FP22 and so this should not be a consideration. This is a land grab creating more walkways without landowner's agreement or compensation.
- 7.5.41 Although Mr Taylor received a letter in February 2017 from BK, Mrs Taylor has never had any official correspondence although owning half of the land in question. Mr & Mrs Taylor were unaware of the public consultations and believe that they should have been notified earlier.

**Mr Zac Martin, on behalf of Ivan Martin & Son (O19)**

- 7.5.42 The proposed route to the south would run alongside a main watercourse needed for water abstraction to irrigate crops at varying times of year. The irrigation piping and equipment is situated on this land and would cross the route, making it a health and safety risk to the public. Although NR say that the bridleway would not obstruct water extraction it would be my responsibility to keep the route free from obstruction, but this is not possible; there is no other means to irrigate the fields.
- 7.5.43 The watercourse is a main route for land drainage to the pumping station and regularly maintained with heavy machinery by the IDB. Safe access is therefore required.
- 7.5.44 The existing footpath (Hereward Way link between BOAT 33 and FP22) uses the verge alongside the highway for the majority of the current route and so there is no reason not to continue on that highway around my land. Although CCC raised concerns over sighting limitations on Dunkirk Corner this was deemed safe access for a new dwelling. It is no worse than Pymoor Corner to the north which is proposed to be used.
- 7.5.45 The bridleway is not required as there is a diversion to the east.
- 7.5.46 Large farm machinery is used on this land all year round, working to the field edges. This would be a public health and safety risk.
- 7.5.47 I was unaware of public consultations. The results showed 64% preferred another route to that proposed. On a 3-day census only 1 person used the existing route. The low footfall does not justify the cost and effect on my business when another route is available.
- 7.5.48 NR have dealt with correspondence poorly. I was not contacted by any party until after the public consultations ended in January 2017. Even then I had to chase information following site meetings. There was no negotiation offered at site meetings and I was left unsure of current plans.

**Ramblers Association (O26)**

- 7.5.49 The Ramblers do not agree with the principle that NR does not need to provide a suitable alternative route for the public in vehicles larger than motorcycles. NR should not be able to avoid making alternative provision for lawful users where those users have been prevented from using the route by illegal obstruction. It is immaterial how long the crossing has been illegally obstructed.
- 7.5.50 The special ambience of this historic route, chosen for inclusion in the promoted long-distance route, could not be replaced by the alternatives proposed. With the exception of the proposed new lengths of bridleway these are already available to the public.
- 7.5.51 Diversions of walkers either to the west or east would be longer and more inconvenient than the existing BOAT 33. Diversion along Main Drove would involve walking along a road, with no dedicated footway, that is used by HGVs. It was accepted by Ms Tilbrook that walkers would probably use the hard-surfaced road and have to step aside onto verges when vehicles approached. This experience would be very different to using BOAT 33.
- 7.5.52 Having heard the evidence of the landowners the Ramblers have concerns that using the proposed bridleway to the south would involve walkers passing very close to diesel lorry engines operating agricultural pumping equipment. This is unsuitable. NR has not fully considered the practical difficulties of providing a suitable bridleway route at this location.

**Ely Group of Drainage Boards (O29)**

- 7.5.53 The Ely Drainage Board made a late representation<sup>186</sup> regarding this crossing, after it had been considered across three Inquiry days<sup>187</sup>.
- 7.5.54 Part of the proposed new bridleway south of the level crossing would be adjacent to the Board's Thirty Foot Main Drain. This watercourse links our two main pumping stations, giving us the ability to divert water. It is vital that there is unrestricted access to the Drain for maintenance. The location of the bridleway could hinder works, placing a burden on the Board to obtain highway closures/diversions.
- 7.5.55 The Byelaws state that any works within nine metres of the edge of a Main Drain require the consent of the Board. This protects maintenance access and gives space to improve (enlarge) a watercourse to give extra capacity. I envisage that the Board would not be willing to consent to a bridleway at this location.
- 7.5.56 Concerns were raised with a NR consultant earlier in the year but consultation over this matter has been poor. In the last twelve months, I have been contacted by four different organisations that do not seem to liaise with each other. I have also been sent numerous letters, many of which were duplicated, some even triplicated, often sent to

<sup>186</sup> NR-INQ-21, email 13 December 2017

<sup>187</sup> 7, 8 and 12 December 2017



unmanned pumping stations. Lessons should be learnt to improve the situation in the future.

### **National Farmers Union (O43)**

- 7.5.57 Evidence from the landowners highlighted that there is no requirement for a bridleway to be created and diverted across agricultural land as proposed. This would take agricultural land out of production and interfere with day to day agricultural operations, in particular abstraction of water from the drainage ditch to irrigate the fields.
- 7.5.58 It would be acceptable for the right of way to continue up O Furlong Drove after crossing Third Drove and on to BOAT 34 without crossing agricultural land.

### **Cambridge Local Access Forum (O52)**

- 7.5.59 BOAT 33 provides an off-road route which is part of the Hereward Way, a long distance promoted route supported by CCC. Closing the crossing would divert walkers onto the adopted highway, Main Drove, which has no footway and another at grade level crossing.
- 7.5.60 Both proposed diversions are longer than the existing route, the western 1.15 kilometres and the eastern 0.9 kilometres with 2 kilometres on the road. The diversions are longer and inconvenient.
- 7.5.61 No incidents or accidents have been recorded at the level crossing and there are excellent sightlines for walkers. Closure to vehicular traffic may be supported.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.5.62 I understand that the proposed new bridleway to the south<sup>188</sup> was introduced to address concerns initially raised by CCC in relation to the use of Dunkirk Corner, to the west, to link to BOAT34 [7.5.14].
- 7.5.63 The Thirty Foot Drain, which runs on the eastern side of the affected field(s) is used for irrigation of the land. 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 [7.5.14]. Those using the equipment gave clear evidence of the way in which the system was used [7.5.38 and 7.5.42] which led others to question the appropriateness of this part of the proposal [7.5.31 and 7.5.52] so far as users were concerned.
- 7.5.64 Concerns regarding unauthorised vehicular access into these fields [7.5.39] could be dealt with by way of appropriate access provision at the entrances during the detailed design. There would, of course, be an effect on the available land as a result of the implementation of a bridleway on the field margins and land 'loss' could be dealt with by compensation provisions [7.5.57]. However, it would be the case that additional considerations would arise in farming land with a public right of way over and above the existing situation [7.5.46].
- 7.5.65 This area is also used by Ely Drainage Board for maintenance [7.5.43, 7.5.54]. The Order has been proposed for modification to disapply the provisions for consent, although including approval of plans prior to commencement of works [7.5.14 and 7.5.55]. However, Schedule 16 strictly limits the specified works for which approval might be sought; it appears unlikely that anything in relation to this bridleway would be specified works. NR say that the works and the bridleway could co-exist and indicate intention to speak further during detailed design [7.5.17].
- 7.5.66 The proposed realignment of FP8 [7.5.6] to the east of the railway would have a positive impact on the landholding through which it currently passes<sup>189</sup>, removing the possibility of enforcement action to reinstate the right of way in this area, which appears to be a working farmyard. The proposed upgrading of the route to the status of bridleway would not appear to have any greater impact on the owners/occupiers than the provision of a footpath. No objections have been made to this proposal.

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<sup>188</sup> NR08, Sheet 5, P018 – P019

<sup>189</sup> NR08, Sheet 20, P084 – P085

- 7.5.67 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' [7.5.22]. 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. CCC suggest that a TRO could be put in place to limit users [7.5.22]. A vehicular route might be less welcomed but there is no reason given why the change in status should place unreasonable burden on the landowner [7.5.10], with compensation also being taken into account.
- 7.5.68 In relation to the crossing there was some discussion at the Inquiry about historical changes to the ability of farmers to use level crossings in the area. Evidence was provided of the release of private rights in relation to two level crossings to the north-west in the early 1990s<sup>190</sup>. This was at least in part connected with the lowering of the road on the underpass at Straight Furlong, an area referred to as Pymoor Sidings, to enable larger agricultural vehicles to use this rather than the level crossings. It seems that C11 has also not been available for agricultural vehicle use from around 1997 according to CCC. There was no evidence of complaints to the highway authority on this until very recently.
- 7.5.69 Taking all the above matters into account I consider that the Secretary of State should be aware 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.
- 7.5.70 Balancing the removal of potential enforcement action against the provision of a public right of way of a different status I do not consider that there would be an overall negative impact on the owners or occupiers in relation to the route to the north-east of the crossing. This would be the case even if the landownership/occupation differed, which is not clarified in the Book of Reference.
- 7.5.71 There do not appear to be any direct effects arising from the closure of the crossing itself.

#### **SOM 4(b) Impacts on other users**

- 7.5.72 The main identified use was public leisure use. The impacts would relate to matters under SOM 4(e).
- 7.5.73 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network.

#### **SOM 4(c) Impacts on flood risk and drainage**

- 7.5.74 The Drainage Board have indicated the importance of the Main Drain in relation to flood control and water management in the area [7.5.54]. The proposed unsurfaced bridleway would be unlikely to affect the maintenance [7.5.17].

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<sup>190</sup> NR-INQ-14

**SOM 4(d) Any other environmental impacts**

7.5.75 No matters were raised with regard to this matter.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.5.76 In relation to the southern bridleway, the idea of 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 [7.5.52]. In addition to the pipes and pumps themselves questions were raised about the idea of placing horses and riders alongside a Main Drain with no fencing [7.5.31 and 7.5.38].
- 7.5.77 Whilst the proposed bridleway would provide a link to FP22, the continuation of the Hereward Way to the south [7.5.35], that route currently makes use of the road to link back to BOAT33. No incidents relating to such use were brought to my attention. Dunkirk Corner is an existing highway, highly likely to be in use by NMUs wishing to connect the off-road routes in the area [7.5.40]. The RSA did not identify any issues with regard to the road and the highway authority apparently did not object to the addition of a new dwelling just to the east of the corner [7.5.44].
- 7.5.78 In the absence of a better off-road link [7.5.30, 7.5.34 – 7.5.36] it seems that users would be as well-served by the road as the proposed bridleway in this instance [7.5.58]. If users did not wish to use Dunkirk Corner, then an alternative exists via Main Drove to the east [7.5.45].
- 7.5.79 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 [7.5.9]. The nine-day census only provides a snapshot in time and, in this case, indicates just 6 walkers. It does not seem reasonable to consider this to represent 'existing users' when other evidence is available, including from the Inquiry evidence.
- 7.5.80 On my site visit in September 2017 I noted evidence of equestrian use to the north of the crossing, although due to ground conditions it was not clear whether that use had or had not included the crossing itself. At the Inquiry evidence was presented of use by trail riders (motorbikes) and horse riders, although it was clear that some users had been put off from using the route by the alteration to the level crossing gates and occasional locking of the structures [7.5.25].
- 7.5.81 On balance I consider that the Secretary of State should take existing users to include those legally entitled to use the route, whether or not they can, or have been shown to, exercise those rights. To do otherwise would be at odds with Defra Circular 1/09<sup>191</sup>, paragraphs 5.23 and 5.25 of which set out that in considering extinguishment and diversion of PROW under the HA80 temporary circumstances must be disregarded [7.5.25, 7.5.49].

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<sup>191</sup> OBJ-12-INQ-09

- 7.5.82 It is recognised that this is different legislation and the same provisions do not apply to, for example, extinguishment or diversion under the TCPA. However, the point is to protect the public and prevent landowners seeking advantage by closing or restricting routes prior to seeking alterations. This would also be in line with the NPPF which indicates at paragraph 98 that "*Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.*"
- 7.5.83 Taking these matters into account I consider that vehicular users should be provided for by the proposed changes, whether or not CCC determine to use TRO to prevent certain use [7.5.22 and 7.5.26]. Motorcyclists are able to cover greater ground than NMUs [7.5.10], and so perhaps reach other off-road routes, including BOAT34. However, the trail riders would still be disadvantaged by the changes, in being expected to make more use of on-road routes [7.5.27 – 7.5.29], which are not the reason for their use in the first instance.
- 7.5.84 Equestrian users would not be denied the gallop available on either side of the crossing given that they have to pass through the gates on either side of the railway; this may or may not involve dismounting [7.5.11 and 7.5.37]. In general, the proposed changes may be less likely to affect horse riders and cyclists with provision of a bridleway to the north and an alternative, on or off-road as discussed above, to the south.
- 7.5.85 Walkers would be most affected with additional distances, changes in direction and greater use of on-road routes [7.5.20, 7.5.51 and 7.5.60]. However, Main Drove is a relatively quiet road with verges for walkers and riders [7.5.13]. The Automatic Traffic Count in October 2016 showed that despite the 60mph speed limit the 85<sup>th</sup>ile speed was less than 38.8mph, with an average 2-way daily traffic flow of 238 vehicles. As such it is not an unreasonable route for NMUs to be diverted onto.
- 7.5.86 A main concern related to the change to the promoted long distance route, the Hereward Way [7.5.50, 7.5.59]. Although the promoted route could be altered I consider 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 [7.5.24]. Whilst the view does remain available in part [7.5.19], and other views are available, the route was chosen as part of a promoted route for a reason; Main Drove and BOAT34 were available at the time and were not designated as part of the route [7.5.12]. Whilst not a National Trail it was designated as part of a European Route.
- 7.5.87 Taking all of these points into account I consider that the proposed changes are not suitable and convenient so far as existing users are concerned. Some improvement for some users might be available in providing a route to the north of the crossing with the status BOAT.

However, this would not overcome the overall impact on the rights of way network [7.5.32].

### **Public Sector Equality Duty**

- 7.5.88 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 [5.32]. I agree with the findings in the Equality and Diversity Overview<sup>192</sup> that the existing route has limited accessibility in terms of uneven surfaces in the first instance. The scoping 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 user to share the carriageway with vehicles. It also refers to the increased distances.
- 7.5.89 I consider that there would be some disadvantages arising for certain persons with protected characteristics, such as those with mobility impairments. However, in balancing this against the existing barriers for these persons in using the route and the changes which would affect all users I do not consider that this would necessarily affect those with protected characteristics such that the PSED would not be met.
- 7.5.90 The Secretary of State may find on the evidence that there would be a failure to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, such that it would add further weight to not including this crossing in the Order.

### **Other matters – consultation/statutory notices**

- 7.5.91 There were again concerns in relation to consultation [7.5.41, 7.5.47, 7.5.48 and 7.5.56]. NR were satisfied that they had complied with the requirements of consultation<sup>193</sup> [7.5.16]. I find it somewhat surprising therefore that an affected landowner was still of the understanding in April 2017, when making his original objection to the Order, that what was being proposed was a footpath, not a bridleway<sup>194</sup>.
- 7.5.92 A Susan Taylor was listed as an occupier in the Book of Reference<sup>195</sup>. Mrs Gail Taylor gave clear evidence to the Inquiry that she did not receive the notification that her husband received but was an owner of the land [7.5.33 and 7.5.41]. Given the problems that arose around the service of notices in this case, which led directly to the removal of some crossings from the Order, it would not be surprising to find more issues had arisen in this respect.
- 7.5.93 It will be noted that the Ely Drainage Board were not identified in the Book of Reference<sup>196</sup> as occupiers of the relevant land and so presumably not served notice as required. They indicate that NR, or

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<sup>192</sup> NR-INQ-18, page 26

<sup>193</sup> NR05, Statement of Consultation

<sup>194</sup> O19

<sup>195</sup> NR09, Page 21, Plot 07

<sup>196</sup> NR09, Page 22, Plots 09, 10 and possibly 10A

their representatives, should have been aware of their interests in relation to this land [7.5.56].

- 7.5.94 As compulsory purchase would be involved in this process the Secretary of State has to be satisfied that the statutory procedures have been followed correctly. Mrs Taylor gave evidence to the Inquiry and the late representation of the Ely Drainage Board has been taken into account above. It may be that, as a result, the Secretary of State is satisfied that any potential prejudice has been overcome [7.5.33]. However, it raises concerns that there may be further unidentified parties in connection with this crossing. It may be that removing this crossing from the Order for later consideration, as occurred with C03, C08, C09 and C13, would be appropriate to ensure compliance.

### **Conclusions**

- 7.5.95 Given the negative effect on owners and occupiers and the limited improvement that the proposed route would give to users, I consider that, if minded to include C11 in the Order, the Secretary of State should not include the southern bridleway. NR were content that this would not impede the Order [7.5.18]<sup>197</sup>. Should the Secretary of State be minded to include C11 then consideration should also be given to providing for the status BOAT in relation to the route to the north of the crossing to improve the proposal so far as existing users are concerned. There are issues with the service of notice in this case.
- 7.5.96 However, taking account of the matters above, and all other matters raised, I consider that the Secretary of State should not include C11 within the Order. The effect on existing users, taking particular account of the changes to a long-distance promoted route, would be significant and, in this case, I consider would outweigh the benefits that may otherwise arise from the closure of the level crossing for NR.

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<sup>197</sup> Annex 1 indicates the proposal without the southern bridleway. Sheet 6 of the Works and Land Plans would not be required in the Order.

## **7.6 C12, Silt Drove<sup>198</sup>**

### **Description of the Crossing and Surrounding Area**

- 7.6.1 Silt Road is a public road lying on the western edge of the town of March. It runs north from the B1099, Upwell Road, to Silt Drove level crossing on the Ely to Peterborough railway line (EMP), continuing north-east to Badgeney Road. Silt Road has arable fields on both sides, with several adjacent properties, including Rose Cottage and Meadow Croft to the south of the railway and 4 farms to the north of the crossing. Although a tarmacked highway this is a narrow country lane with a lower standard of maintenance, appropriate to the predominantly non-vehicular use.
- 7.6.2 The crossing is a public highway user worked crossing with a telephone (UWCT). There are also stiles in the railway boundary fence. The railway at this crossing comprises 2 tracks, carrying passenger and freight, with a line speed of up to 60mph. A nine-day camera census between 18 and 26 June 2016 recorded 334 pedestrians and 62 cyclists using the crossing. This was the highest level of NMU of all the crossings under this Order.
- 7.6.3 With the exception of the large town to the west the surrounding area appears to be ditched and farmed fenland with individual farms, properties and minor roads. There is a railway station in March, a little to the north-west of the crossing C12.

### **Description of the Proposal**

- 7.6.4 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.
- 7.6.5 The crossing would remain a user worked vehicular crossing for registered users, who would be granted private rights. Public motorised vehicle users would be diverted from the south of Silt Drove crossing via Upwell Road and Badgeney Road to Badgeney Road level crossing, which is a half barrier level crossing with an ALCRM score of C3, to reconnect with the continuation of Silt Road to the north.

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<sup>198</sup> Also referred to as Silt Road



## The Case for the Applicant, Network Rail

- 7.6.6 The ALCRM score for the UWCT crossing is B4 and for the FPS crossing the ALCRM score is C5.
- 7.6.7 Between 2011 and 2015 there were 10 incidents of misuse and 5 near misses at the UWCT crossing. A further near miss was recorded on 21 October 2016. At the FPS type crossing between January 2012 and July 2015 2 near misses (one incident involving a suicidal person) and 2 incidents of misuse were recorded.
- 7.6.8 Access to the crossing is via a steep gravelled, uneven single lane road and so it is likely that any users with mobility difficulties or wheelchairs would have significant difficulty using this crossing. Vehicle users must open a gate to access, while pedestrians use a stile, which is likely to present difficulties to those with mobility issues.
- 7.6.9 The nine-day census survey showed use by 334 pedestrians and 62 cyclists, with the busiest day being Sunday 16 June when 46 pedestrians and 16 cyclists were recorded. 15 vehicles were also recorded during the survey period with 4 on Thursday 23 June, of which 2 were HGVs and 2 tractors with trailers.
- 7.6.10 Of the 23 people that provided feedback during public consultation, 2 indicated daily use, 10 weekly, 3 fortnightly, 1 monthly, 5 rarely and 1 never. 16 people used it for leisure purposes, 2 to access neighbouring property, 1 to access school and 4 gave no reason for use.
- 7.6.11 The crossing is used on a regular basis by a relatively large number of people, mainly for leisure but also to access the properties around the level crossing. There was low, infrequent vehicle use of the crossing. The diversion for motorised users requires an additional length of approximately 1,000m, however, the origin and destination points would affect the overall length. There would be no change for bridleway users.
- 7.6.12 Private registered users are defined in article 2 of the Order (Interpretation) as meaning "*any person to whom Network Rail grants a permit on written request to use any crossing referred to in this Order for such purposes or to access such land as may be specified in the permit on such terms and conditions as Network Rail may reasonably specify*". The users will generally be those who currently use the crossing to access land and property, their lawful invitees and others providing services such as refuse collection/emergency services) where such access is not practicable by another route, or where land is held by one owner adjoining the railway on both sides.<sup>199</sup>
- 7.6.13 In this case the authorised users are expected to be agricultural landowners owning and occupying land northeast of railway line. This takes account of the unsuitability of Badgeney Road, which is a residential street, for agricultural access.

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<sup>199</sup> See Document NR-INQ-19 for details

- 7.6.14 Following a scoping study, although public vehicular users of the crossing would be required to travel further, this impact is unlikely to be felt disproportionately by particular sections of the population protected by equality legislation. A DIA was not required as no alterations to pedestrian access were anticipated.
- 7.6.15 The proposals were subject to a Stage 1 Road Safety Audit carried out in line with HD19/15 by an independent team remote from the option development design team. The Audit Team did not identify any road safety related issues associated with the scheme. The local highway authority had no objections to the proposed route.
- 7.6.16 Schedule 16 to the filled Order includes protective provisions for the benefit of drainage authorities, including IDBs. These protective provisions require NR to provide the drainage authority for category 2 specified work with plans of its proposed works and such further particulars as may reasonably be required. This is set out to mean *"...any of the following— (e) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction; (f) erecting a culvert in any ordinary watercourse; (g) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or (h) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a)..."*<sup>200</sup> The drainage authority may impose conditions requiring NR to construct such protective works as may be reasonably necessary to safeguard any drainage work against damage or to secure its efficiency for flood defence purposes.
- 7.6.17 Following consideration of use of the existing route across Silt Drove level crossing and assessment of the proposed alternative in terms of impacts on the environment, users and other impacted parties, the proposed route is suitable and convenient in the context of the purpose and characteristics of the existing route.

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<sup>200</sup> NR-INQ-38, Schedule 16, paragraph 1

## **Representations**

### **D Thomas, Middle Level Commissioners (R3)**

- 7.6.18 This level crossing is within the area of Middle Level Commissioners ("the Commissioners") and the March East IDB ("the Drainage Board") that the Commissioners administer. The Commissioners are a statutory water and flood risk management and navigation authority responsible for the maintenance of major watercourses within their catchment. The Boards are autonomous water level and flood risk management authorities supervising drainage at a more local level.
- 7.6.19 Under the Byelaws made under the Land Drainage Act 1976 there is a restriction on erections, installations and excavations in, across or within 9 metres of a watercourse. The Board's consent would be required for works within or adjacent to this access strip. There is also restriction on diversion, stopping up or filling in of any watercourse without previous consent of the Board.

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## **The Cases in Objection**

### **National Farmers Union (O43)**

- 7.6.20 Closing this crossing could lead to farm traffic having to travel through a housing estate.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.6.21 The NFU raised concerns that the changes could lead to agricultural vehicles having to travel through a housing estate [7.6.20], making use of Badgeney Road to the north of the crossing and then into March. The survey in the period 18 – 26 June 2016<sup>201</sup> showed a total of 4 tractors and trailers using the crossing and 4 HGVs, which are most likely to have been associated with access to and from the farm(s) to the north.
- 7.6.22 No objection has been raised from the potentially affected farms, or other neighbouring properties. This may be because they are content with the proposed provision of private rights over the crossing [7.6.11] and/or because the alternative routes to the west are already in use. Given that use of the crossing in a vehicle<sup>202</sup> requires stopping to telephone for clearance to cross, opening gates, crossing, closing gates and then calling to confirm you are clear of the crossing, it appears generally easier to travel via alternative routes [7.6.8].
- 7.6.23 The provision of appropriate signage and vehicular turning heads [7.6.4] should minimise the impact on local businesses, for example those making deliveries to properties. There was some use by vehicles but whether this was in a public capacity or to access property is unclear. On balance the overall effect of the proposed changes should be minimal.

### **SOM 4(b) Impacts on other users**

- 7.6.24 The main identified use appears to be public leisure use [7.6.9 – 7.6.11]. The impacts would relate to matters under SOM 4(e), discussed below.
- 7.6.25 The strategic case sets out how rail users would benefit from the proposals, removing level crossings from the rail network. In this case the level crossing would not be closed entirely but the use by vehicles would be restricted [7.6.4 – 7.6.5]. This would remove an element of risk from the crossing, which I consider would benefit rail users.

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.6.26 No evidence was submitted to suggest any impact on flood risk or drainage in this area. The introduction of the turning heads would lead to further hard surfacing and so appropriate drainage would

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<sup>201</sup> Level Crossing Traffic Census Survey Report June 2016, 3267-LON Site C12 – Silt Drove Level Crossing, Proofs of Evidence NR32-2, Appendix 14

<sup>202</sup> Which I did during my site visit

be required. This matter would be overseen by CCC as the highway authority.

- 7.6.27 There are drains alongside the road, which are likely to be overseen by the relevant Drainage Board [7.6.18]. The Byelaws lead to restrictions on certain works within 9 metres of a watercourse [7.6.19], whilst the Order requires NR to take certain actions in relation to works [7.6.16]. There is nothing to suggest the requirements within the Order would be inadequate in terms of the IDB oversight.

#### **SOM 4(d) Any other environmental impacts**

- 7.6.28 No matters were raised with regard to this. The land to be acquired for the vehicular turning heads are identified as numbers 16 and 17 on the plan<sup>203</sup>, and appear to be uncultivated field corners, alongside the railway line embankments. There are trees and scrub in these areas and so there will be a loss of vegetation arising from the proposal. However, subject to the planning conditions<sup>204</sup> I consider that the Secretary of State can be satisfied on this matter.

#### **SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.6.29 There would be a significant additional length for vehicular users of around 1km [7.6.11]. However, as noted above, it appears that the level of such use is low and that related to property will not be lost, due to the provision of private rights.
- 7.6.30 The level of non-motorised leisure use appears to be significant [7.6.9 – 7.6.11], unsurprisingly on the edge of such an urban area. However, these users would still be able to use the route and there would be improvements with the provision of mounting blocks [7.6.4], and the potential gain of less vehicular use.
- 7.6.31 The Stage 1 RSA has identified no matters of concern [7.6.15] and CCC, the local highway authority, raised no concerns in this respect.
- 7.6.32 I consider that the Secretary of State can be satisfied that the proposal provides suitable provision of alternative routes for public vehicular users. Other users are unaffected by the proposal.

#### **Public Sector Equality Duty**

- 7.6.33 No DIA was carried out following scoping of this proposal. I agree with NR that the impact of additional travel for motorised users would be unlikely to be felt disproportionately [7.6.14]; everyone would be affected in the same manner regardless of any protected characteristics. There would be no change for NMUs, with the exception of anyone travelling by horse and carriage, for which no evidence arose.

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<sup>203</sup> Sheet 4, Core Document NR08

<sup>204</sup> Section 11 of this report

- 7.6.34 The Secretary of State can be satisfied 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). The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

**Conclusions**

- 7.6.35 Taking account of the above, and all other matters raised, I consider that the Secretary of State should include this proposal within the Order.

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

### **Description of the Crossing and Surrounding Area**

- 7.7.1 Footpath 50 ("FP50") crosses the Ely to Peterborough railway line (EMP) to the east of the market town of Whittlesey, where there is a railway station. The Cathedral city of Peterborough lies further east, with the village of Eastrea north-west of the crossing and Coates to the north-east. With these residential areas situated generally to the north, the surrounding area and land to the south appears as ditched and farmed fenland with individual farms, properties and minor roads.
- 7.7.2 FP50 links Wype Road to Footpath 52 ("FP52"), which then links to other rights of way meeting at Oldeamere Farm. FP52 also crosses the railway line to the east of C14 and to the east is a vehicular level crossing on Wype Road, which gives access to and from Estrea.
- 7.7.3 FP50 is an unmade route with a passive footpath level crossing, stiles in the railway boundary fence and SLL signs. The railway comprises two tracks, carrying passenger and freight trains, with a line speed of up to 75 mph. The ALCRM score for this crossing is C6. A 9-day camera survey in June 2016 recorded 2 pedestrians using the crossing whilst an ALCRM census in August 2016 recorded 1 user.

### **Description of the Proposal**

- 7.7.4 It is proposed to confer powers to close the level crossing to all users and extinguish PROW over the crossing. 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.
- 7.7.5 A steel footbridge of >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.
- 7.7.6 Crossing infrastructure would be removed and fencing installed to prevent trespass onto the railway.

## **The Case for the Applicant, Network Rail**

- 7.7.7 There was no concern for users per se, but CCC object on the basis that the proposed path would not be made up to a good enough specification to prevent it being damaged by farm machinery. The landowner disagrees with CCC but argues that the route should run between the two drainage ditches rather than in the field boundary.
- 7.7.8 It would be excessive to engineer a footpath as sought; this is a field edge path and should not be a metalled road. There is no reason for the farmer to drive on the path and no reason to think that it would be subject to any special damage beyond the normal wear and tear of a field edge path. As identified by the landowner installing a new road would lead to loss of agricultural land and potential vehicular trespass.
- 7.7.9 CCC argued that NR lacked the expertise to speak to the structure of the path. Ms Tilbrook is a highways engineer and is the best placed witness to speak to this point.
- 7.7.10 CCC would have to approve the detail of the path, so this should be a matter for detailed design. CCC would have to be reasonably satisfied as to the form of the path laid out by NR before the level crossing closure could be implemented.
- 7.7.11 The protective provisions under Schedule 16 to the Order require NR to provide the drainage authority with plans of its proposed works and such further particulars as may reasonably be required. The IDB may impose conditions requiring NR to construct such protective works as may be reasonably necessary to safeguard any drainage work against damage or to secure its efficiency for flood defence purposes<sup>205</sup>.
- 7.7.12 The difficulty with the landowner's proposal is that the space between the drainage ditches is close to the ditches and, according to the IDB, used for maintenance purposes. It does not therefore present a viable option. The presence of a field edge footpath would not be a substantial interference with the agricultural use of the field, and in any event would give rise to a compensation claim.

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<sup>205</sup> NR-INV-15



## Representations

### **D Thomas, Middle Level Commissioners (R3)**

- 7.7.13 This level crossing is within the area of Middle Level Commissioners (“the Commissioners”) and the Whittlesey IDB that the Commissioners administer. The Commissioners are a statutory water and flood risk management and navigation authority responsible for the maintenance of major watercourses within their catchment. The Boards are autonomous water level and flood risk management authorities supervising drainage at a more local level.
- 7.7.14 Under the Byelaws made under the Land Drainage Act 1976 there is a restriction on erections, installations and excavations in, across or within 9 metres of a watercourse. The Board’s consent would be required for works within or adjacent to this access strip. There is also restriction on diversion, stopping up or filling in of any watercourse without previous consent of the Board.
- 7.7.15 We undertake maintenance on a rotation basis between the field side and the railway side. Weed cutting would deposit material on the drain side rather than the field.<sup>206</sup>

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<sup>206</sup> NR-INQ-20

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 7.7.16 CCC accepted that the current crossing was safe and fit for purpose but that signals would mean that if a train had to stop it may be either over the crossing itself or may obstruct visibility. It was also accepted that the proposal would mean anyone crossing the railway would be using an active, rather than a passive, crossing.
- 7.7.17 CCC's objection related to the proposed level of works on the alternative route, which were insufficient to safeguard the surface of the route against damage arising from likely vehicular use. CCC's view was that a hard-surfaced track was required to address this issue as this will safeguard the surface of the route and reduce the potential maintenance burden for the Highway Authority. NR have already specified that the areas around the ditch crossing culverts need a hardened surface and CCC believe this needs to be continued along the rest of the alternative route.
- 7.7.18 The alternative route is used by the Drainage Board and it is anticipated that use by heavy agricultural vehicles is likely to increase as it would be a 2.5-metre-wide, levelled and compacted uncultivated corridor; it would be a natural route for accessing the land avoiding crop damage etc.
- 7.7.19 NR have said that this level of work would be disproportionate, and the landowner does not want it. Although CCC sympathise with the landowner's position, it has the duty to protect and maintain the PROW network. CCC do not wish to have an increased maintenance liability or to have to consider enforcement action against the owners/occupiers of the land in respect of any damage to the surface of the route arising from use by agricultural vehicles. The level of works sought would not be disproportionate and are a considered response in light of the Highway Authority's direct experience of these matters. This is a level of experience and understanding that NR do not have and have not sourced externally as part of this project.
- 7.7.20 Once crossing closure has been implemented and signed off after the initial maintenance periods NR simply walk away from the issue. It will be CCC and the Public Purse that will be left to address any problems that have been created.

### Mr Martin White *on behalf of Messrs M and N White* (O23)

- 7.7.21 Mr White farms the land adjacent to the railway line along which it is proposed a new footpath would be created to accommodate the closure of the crossing. He believes it is not necessary to create a new footpath as there is already a footpath which runs up Cross Drove to Lake Drove and on to Wype Road. Only one person was recorded using the existing footpath during the three-day survey and, therefore, the cost of creating the new footpath and taking land out of arable production is unreasonable.

- 7.7.22 As indicated on the NR map, a drainage channel runs between the railway line and the proposed footpath. The statutory requirements laid down by the byelaws mean that no construction is permitted within 9m of a drainage channel. This would leave severed land between the footpath and drainage channel, which would be unworkable for modern agricultural practices.
- 7.7.23 It has not been possible to hold constructive discussions with NR or their representatives to discuss alternative options. Mr White objects to this loss of productive agricultural land but, if there are exceptional reasons as to why the new footpath has to be created, propose that it should be on the area between the drainage channel and the railway line and not on the field side of the drain.
- 7.7.24 Mr Martin only received one Notice for C15 – Brickyard Drove Level Crossing when he should also have received a Notice for C14 Eastrea Cross Drove.

### **National Farmers Union (O43)**

- 7.7.25 Evidence was given by the NFU on behalf of Mr M White. It is not necessary to create the proposed footpath over agricultural land as the diversion is not required; pedestrians walking on Cross Drove can use routes 49, 51 and 52 over Baileys Crossing to reach Wype Road and then possibly Eastrea Village or Eastrea Crossing.
- 7.7.26 If the footpath has to be diverted from Eastrea Cross Drove, then it should be located on the land between the drainage channel and the railway line rather than on agricultural land. This is accessible with no structures blocking a footpath being created.
- 7.7.27 If the footpath is created on agricultural land, then it should not be surfaced or engineered but created as a normal field edge footpath. If it is surfaced, then there is concern that it would end up being used by vehicles. To stop unauthorised access it is requested that, if the footpath is created, a gate or barrier be erected to stop it being used as a bridleway.
- 7.7.28 The drain is cleaned out every 3 years, with the arisings going on the field side.

### **Robert Dale (O55)**

- 7.7.29 The proposed new footpath would run along the southern boundary of Mr Dale's field and he agrees with Mr White that it is not necessary to create a new footpath here.
- 7.7.30 He believes that if there were exceptional reasons as to why a new footpath had to be created then it should be located on the land that lies between the railway line and IDB drain and not on the field side of the drain.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Site visit

7.7.31 I made an unaccompanied site visit on 5 September 2017, viewing the proposal so far as possible from existing PROW and roads. Given the matters raised during the Inquiry I made an additional unaccompanied site visit on 20 February 2018, when I was able to walk the routes discussed.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.7.32 The proposed route would have some effect on the agricultural land, removing it from production and requiring management of the land taking account of a right of way in that location [7.7.21 and 7.7.29].

7.7.33 The use of the land between the drain and the railway line would have addressed the issue [7.7.23, 7.7.26, 7.7.30], although potentially affecting the IDB in relation to their maintenance [7.7.15, 7.7.28].

7.7.34 There was some discussion on whether the route should be surfaced [7.7.17]. There was concern that the provision of the route would be likely to increase vehicular use in connection with both the agricultural and IDB uses of the area and so increase the maintenance burden on CCC [7.7.18 – 7.7.20].

7.7.35 It is noticed that the wider Ordnance Survey mapping<sup>207</sup> shows all but two of the rights of way in this area<sup>208</sup> to be field-edge and/or following well established tracks, as this route does at present. To that extent it is accepted that local knowledge and expertise may assist in decision-making [7.7.9 and 7.7.19]. However, the landowners did not wish for a vehicular track in this location, which would increase the land take [7.7.8 and 7.7.27]. It remains for CCC to approve the provided route [7.7.10] and so these matters could be dealt with in detailed design.

7.7.36 In relation to the concerns about severed land [7.7.22] the Order has been proposed for modification to disapply the provisions for consent, although including approval of plans prior to commencement of works<sup>209</sup> [7.7.11]. It appears unlikely that anything in relation to this footpath would be specified works. There would be no severed land resulting from the proposal.

7.7.37 There would be some impact on land owners, tenants and local businesses. However, as a field-edge route the effect would be minimised and there are compensation provisions [7.7.12].

<sup>207</sup> NR32-2, Appendix 9

<sup>208</sup> The footpaths between Eldernell and Coates and to the March/Wisbech Road

<sup>209</sup> Filled order, Schedule 16

**SOM 4(b) Impacts on other users**

- 7.7.38 In relation to pedestrian use the impacts would relate to matters under SOM 4(e).
- 7.7.39 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network.

**SOM 4(c) Impacts on flood risk and drainage**

- 7.7.40 The IDB made a general representation [7.7.13 and 7.7.14] on the matter. With regard to the possibility of using the area alongside the drain the information from IDB suggested that their maintenance would be unlikely to impact on the area. Although there may be occasional impacts during time of the work itself this would be similar to maintenance in any countryside area.
- 7.7.41 It seems that neither the proposed or suggested route would prevent maintenance and so there would be no alteration to flood risk or drainage matters. However, in relation to the suggested route NR noted drainage infrastructure at the western end, which led to concerns on the suitability<sup>210</sup>.

**SOM 4(d) Any other environmental impacts**

- 7.7.42 No issues were raised in relation to this matter.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.7.43 It has been suggested that the proposed route is unnecessary [7.7.21, 7.7.25 and 7.7.29]. With just 2 users recorded in the nine-day census [7.7.3] this crossing falls into the lower third of the affected crossings when considering the level of pedestrian use. The use is low, however, there was also use in August 2016 and so there is clearly some level of regular use. The route is one of a number of routes in this area which could be used for circular walks from Coates and Eastrea. Taking these points into account I consider that the Secretary of State can be satisfied that a route north of the railway would be required if determining to close the crossing.
- 7.7.44 The concern about vehicular use affecting the route is noted; however, even if the route was used by vehicles [7.7.18] it seems unlikely that walkers would be unable to use the entire 2.5m width proposed. Improvements would be made at the ditch crossing culverts [7.7.17], which would be likely to be the most affected areas. CCC remain the body to approve the final route on site and this should give comfort that a suitable route would be provided to their reasonable satisfaction [7.7.10]. On balance I consider that maintenance issues can be reasonably dealt with through this process.

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<sup>210</sup> NR32-2, Appendix 8

- 7.7.45 The proposed route would not be significantly longer, given the connection to be provided at Eastrea level crossing<sup>211</sup>. The provision of the route alongside Wype Road<sup>212</sup> would avoid the need for road-walking, which would be an improvement on the existing route, which puts users onto that road to the south-east of Eastrea level crossing.
- 7.7.46 It is unfortunate that there did not appear to be a way to make use of the land alongside the drain as this might also have been preferable for the public, providing a route with even less likelihood of interaction with agricultural machinery. Nevertheless, the proposed route would not be unreasonable for users. Accessibility could be improved by avoiding the use of stiles on the proposed route, following British Standard 5709<sup>213</sup>, and this is a matter that CCC could deal with in their approval process [7.7.10].
- 7.7.47 I consider that the Secretary of State can be satisfied that whilst there might 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.

#### **Other matters – statutory notices**

- 7.7.48 Mr Martin White was listed as an owner and occupier in the Book of Reference in relation to the land affected by C14<sup>214</sup>. He was not listed in relation to the plots affected by C15 but apparently received notice on C15 but not C14 [7.7.24]. It has been noted that there were problems around the service of notices in relation to this Order, which led to the removal of some crossings, and so it is unfortunate to find more issues in this respect.
- 7.7.49 As compulsory purchase would be involved in this process the Secretary of State has to be satisfied that the statutory procedures have been followed correctly. Mr White gave evidence to the Inquiry and the NFU also spoke on his behalf. As a result, the Secretary of State may be satisfied that any potential prejudice has been overcome. However, it may be that removing this crossing from the Order for later consideration, as occurred with C03, C08, C09 and C13, would be appropriate to ensure compliance.

#### **Conclusions**

- 7.7.50 There would be an effect on owners and occupiers, however, in balancing all the relevant matters I consider that the Secretary of State should include C14 within the Order, subject to consideration of the matter of statutory compliance set out above.

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<sup>211</sup> NR08, Sheet 1, P007 – P008

<sup>212</sup> NR08, Sheet 1, P007 – P009

<sup>213</sup> Core Documents, CCC, 42

<sup>214</sup> NR09, Pages 12 and 13, Plots 32, 33 and 35

## **7.8 C15, Brickyard Drove**

### **Description of the Crossing and Surrounding Area**

- 7.8.1 Whittlesey Footpath 48 ("FP48") crosses the Ely to Peterborough railway line (EMP) to the east of the market town of Whittlesey, where there is a railway station. The Cathedral city of Peterborough lies further east, with the village of Eastrea more immediately to the north of the crossing and Coates a little further to the north-east. With these residential areas situated generally to the north, the surrounding area and land to the south appears as ditched and farmed fenland with individual farms, properties and minor roads.
- 7.8.2 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. To the south FP48 runs generally south-west alongside and above the field to the south, turning south to share a private vehicular access track joining the B1093, Benwick Road. To the east is a vehicular level crossing on Wype Road, which gives access to and from Estrea.
- 7.8.3 There is another footpath level crossing to the west, marked as Fen Lots Drove in the statement of case<sup>215</sup>. Footpath 41 ("FP41") runs south from this crossing to Benwick Road.
- 7.8.4 FP48 is an unmade route with a passive footpath level crossing, stiles in the railway boundary fence and SLL signs. The railway comprises two tracks, carrying passenger and freight trains, with a line speed of up to 75 mph. The ALCRM score for this crossing is C10. A suicide was recorded at this level crossing in 2006. A 9-day camera census was undertaken between 18 and 26 June 2016 which recorded a total of 22 pedestrians using the crossing.

### **Description of the Proposal**

- 7.8.5 It is proposed to confer powers to close the level 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.
- 7.8.6 The proposed footpath would be approximately 460m in length heading east and then northeast to Wype Road, with a new footbridge (approximately 5m in length) required to cross a small water feature. Users would cross the railway via Eastrea level crossing using existing verges. Approximately 164m of FP48 to the south of the railway would be extinguished.
- 7.8.7 Crossing infrastructure would be removed and fencing installed to prevent trespass onto the railway.

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<sup>215</sup> NR26, Drawing No. MMD-367516-C15-GEN-005

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## The Case for the Applicant, Network Rail

- 7.8.8 CCC's main concern, raised also by the landowner, is the presence of a cross field path. This is not a sound basis for resisting the proposals:
- a. Cross field paths are common place: at C20, CCC oppose a closure where the current footpath is a cross field path, and the proposed diversionary route is not;
  - b. Cross field paths are capable of being maintained and Mr Smith gave cogent evidence on this point. As a chartered surveyor with significant experience of rural issues and a good familiarity with farming practices he understands the position;
  - c. CCC's position ignores the reason for the cross-field proposal, which is the existence of a badger sett which would potentially be interfered with by the original, field margin, proposals. It would be unlawful to allow such interference when an alternative is available.
- 7.8.9 Although Ms Champion, for CCC, suggested that the proposals required greater use of Benwick Road, for most users the changes would not have that effect. The suggestion of a link to a byway south of Benwick Road was obviously wrong, as the byway is severed by a deep ditch.
- 7.8.10 There is concern about loss of amenity and impact of the proposed route on property; the statement of case does not reflect the final design as set out in the Order plans and sections<sup>216</sup>.
- 7.8.11 Others objected to the use of their land for the proposed footpath and the impact on farming practices. There were concerns about the adequacy of consultation. NR's consultation is described in the Statement of Case and complied with the legislative requirements of the 2006 Rules, taking account of feedback from a variety of interested parties.
- 7.8.12 The alternative route is not significantly longer, and NR believes that the replacement route is suitable and convenient for existing users.

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<sup>216</sup> NR08, Sheet 1, east of P001



## **Representations**

### **D Thomas, Middle Level Commissioners (R3)**

- 7.8.13 This level crossing is within the area of Middle Level Commissioners ("the Commissioners") and the Whittlesey IDB ("the Board") that the Commissioners administer. The Commissioners are a statutory water and flood risk management and navigation authority responsible for the maintenance of major watercourses within their catchment. The Boards are autonomous water level and flood risk management authorities supervising drainage at a more local level.
- 7.8.14 Under the Byelaws made under the Land Drainage Act 1976 there is a restriction on erections, installations and excavations in, across or within 9 metres of a watercourse. The Board's consent would be required for works within or adjacent to this access strip. There is also restriction on diversion, stopping up or filling in of any watercourse without previous consent of the Board.

## The Cases in Objection

### **Denise Livingstone *on behalf of herself, Mr Bernard Bird and Susan Bird* (O4)**

- 7.8.15 The family live at 221 Benwick Road<sup>217</sup>. Mr Bird mows the footpath and uses it for regular exercise. The family keep dogs in kennels at the edge of the property, where they are undisturbed and cause no disturbance to other people. Moving the footpath to the proposed route would take walkers closer to this area, causing hassle.
- 7.8.16 There was no initial notification of the proposal as the courier did not deliver a leaflet to the property. The family became aware from a passing comment and attended the first meeting. The consultation forms gave no option to keep the crossing open, only to list the order of preference of an alternative.
- 7.8.17 It was indicated that the crossing was to be closed on safety grounds but there has never been an incident on this crossing. It was suggested that more trains could run but as the main Whittlesey crossing<sup>218</sup> can be closed for 40 minutes in the hour this was not for the benefit of residents. There was an unlikely suggestion of a road over the crossing.
- 7.8.18 At the second meeting it was said that the track would follow an edge of field route, which would be satisfactory. It is nearly impossible to walk in fen fields at several times of the year.
- 7.8.19 A cross-field path will be ploughed and too soft to walk generally, let alone when needing to walk through crops or in poor weather which will limit availability. The footpath to the crossing would be abandoned, with no pedestrian access to Whittlesey Country Park that is due in the future, or the path on the other side of the track without a long detour. At present it is possible to walk off-road but this would be altered by the changes; walking is the best option for mental wellbeing and to assist in managing arthritis.
- 7.8.20 There is no financial or other gain to be had from closing the crossing and so it should be left open.

### **Phil Gray, Clerk to The Whittlesey Charity *on behalf of The Whittlesey Charity* (O6)**

- 7.8.21 The Trustees of The Whittlesey Charity ("TWC") own the land known as Lattersey Field Farm, over which NR propose to create a new diagonal footpath. TWC oppose the creation of any footpath on this land as it would not be used. There are ample footpaths north of the railway line, near the village, popular with a few walkers, cyclists and horse riders. They have no reason to cross the railway and rarely, if ever, do. Mr Smith, who has lived at Jamwell Farm<sup>219</sup> for eighteen years, has never seen members of the public south of the railway line.

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<sup>217</sup> NR08, Sheet 1, adjacent plot No 5

<sup>218</sup> To the west on the B1093, Station Road

<sup>219</sup> NR08, Sheet 1, adjacent plot No 16

- 7.8.22 TWC had cooperated with NR but have had no opportunity to discuss this proposed route after objecting to the original. The current proposal is worse than the original of September 2016.
- 7.8.23 The current proposal was put forward in March 2017 but, despite asking for information, TWC were not told until 21 November 2017, a week before the opening of the Inquiry, that evidence of badger activity was found in December 2016<sup>220</sup>. It was not reasonable that NR did not provide this information earlier. The crossing should remain open and the badgers, if they are still there, would be undisturbed.

### **Cambridgeshire County Council (O12)**

- 7.8.24 The proposed alternative path is not suitable or convenient as it would cross a field subject to regular surface disturbance from agricultural activities. NR's witnesses demonstrated a lack of understanding of the effect of operations, such as ploughing, and of what might be a reasonable standard of reinstatement as set out in HA80<sup>221</sup>. They had little or no understanding of the implications that keeping a path clear of crops might have on land productivity.
- 7.8.25 NR would be responsible for the surface of the new path for the first twelve months, reinstating the surface following any disturbance during that period. However, it was apparent that they were not aware of the implications of these commitments (i.e. full reinstatement within 14 days of first disturbance and then 24 hours of subsequent disturbance, as per the Rights of Way Act, 1990<sup>222</sup>). If NR failed to adhere to those timescales, the occupier of the land may be liable to criminal proceedings or enforcement action. In the latter case all costs relating to such works would be recovered from the occupier of the land, who may in turn seek recompense from NR.
- 7.8.26 The path must be kept clear of crops, including those falling and overhanging from the sides. With crops such as sugar beet one might have to clear 1.5 – 2 metres either side of the legal width of a path to ensure it remained clear; a swathe of 5 metres is not unrealistic.
- 7.8.27 After the initial 12-month maintenance period, CCC will not be in a position to require the occupier of the land to reinstate the footpath, following disturbance, to the standards NR seek to implement. CCC can only require reinstatement to a standard that is "reasonably convenient" for the exercise of the public right of way.
- 7.8.28 With crops as indicated by the landowners (e.g. potatoes, sugar-beet etc) reinstatement to even the most basic of standards is no easy task. NR have underestimated the liabilities that this places on both the owners/occupiers of the land and the Highway Authority. They will leave a path substantially inferior to the existing route, having a significant detrimental impact on the usability of the route.

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<sup>220</sup> OBJ-06-INQ-01

<sup>221</sup> OBJ-12-INQ-08 (attached)

<sup>222</sup> OBJ-12-INQ-08 (attached)

7.8.29 It was Karen Champion's evidence, based upon 30 years' experience, that she did not find cross field paths, even when reinstated, as convenient as an undisturbed field edge path, which is analogous to any other undisturbed grass paths such as the existing route of FP48. She would be wary about accepting or agreeing any new path if it was a cross field route.

**Shirley Pollard, Maxey Grounds & Co LLP on behalf of Mr J.D. Fountain and Mr D. Fountain (O34)**

7.8.30 Messrs Fountain farm the land at Lattersey Field Farm, which belongs to TWC (O6). A NR survey demonstrated that the local community would make little use of the footpath, with only one person in a three-day period. Therefore, it does not seem necessary.

7.8.31 A diagonal footpath would cause maximum disruption and significant problems farming the remainder of the land. The land would be split in two sections making cultivation, spraying and cropping cumbersome, time consuming and costly. Efficient food production should take precedence.

7.8.32 The original field edge proposal would have been disruptive, but the current proposal shows a lack of understanding of how the land is farmed. Large machinery is required to give maximum efficiency, and this would be made difficult by the proposal.

7.8.33 At no point was the diagonal footpath discussed with Messrs Fountain and, therefore, was due process followed?

7.8.34 This raises concerns for health and safety as pedestrians would walk across actively farmed land; there would be greater possibility of damage and contamination of crops; trespass onto the field could not be prevented meaning the public could come into contact with heavy machinery and chemical sprays; and, the proposed route does not lead to another footpath or walkway, bringing users onto a busy main road, coming into contact with vehicles.

7.8.35 With the use of public money under scrutiny, how can the cost of construction and maintenance of the proposed footbridge be warranted? The project costs appear considerable and out of proportion, when the evidence shows it would hardly be used.

7.8.36 Messrs Fountain have only recently been made aware of possible badger activity in the vicinity of the proposed footpath. It has taken many months for this information to be provided.

7.8.37 There have been no incidents at this crossing and with such minimal use there is no reason to alter the situation.

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**Shirley Pollard, Maxey Grounds & Co LLP on behalf of Mr Jonathon Brown and Mr Robert Brown (O35)**

- 7.8.38 Messrs Brown (EC Brown and Sons) farm the land adjacent to Lattersey Field Farm, which would be affected by the proposed footpath. Messrs Brown specialise in growing root crops, particularly potatoes and onions.
- 7.8.39 A NR survey demonstrated that the local community would make little use of the footpath, with only one person in a three-day period. Messrs Browns' extensive knowledge of the local area indicates no demand for a footpath to the south of the railway line. Therefore, it does not seem necessary.
- 7.8.40 The proposed footpath would be disruptive, bringing practical problems in machinery usage, particularly crop spraying.
- 7.8.41 There are concerns for health and safety as pedestrians would walk over actively farmed agricultural land; there would be greater possibility of damage and contamination of crops; trespass onto the field could not be prevented meaning the public could come into contact with heavy machinery and chemical sprays; and, the proposed route does not lead to another footpath or walkway, bringing users onto a busy main road, coming into contact with vehicles.
- 7.8.42 With the use of public money under scrutiny, how can the cost of construction and maintenance of the proposed footbridge be warranted? The project costs appear considerable and out of proportion, when the evidence shows it would hardly be used.
- 7.8.43 Messrs Brown received 20 identical copies of the original documentation from BK, which is a waste of resources and has taken time to sort through, to establish that it was duplicated. The cost and disruption would appear to be excessive in this rural area.
- 7.8.44 Messrs Brown have only recently been made aware of possible badger activity in the vicinity of the proposed footpath. It has taken many months for this information to be provided.
- 7.8.45 There have been no incidents at this crossing and with such minimal use there is no reason to alter the situation.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Site visit

7.8.46 I made an unaccompanied site visit on 5 September 2017, viewing the proposal so far as possible from existing PROW and roads. Given the matters raised during the Inquiry I made an additional unaccompanied site visit on 20 February 2018, when I was able to walk the proposed routes.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.8.47 In relation to the cross-field section east of P001 the plans have altered such that the western end would not run directly alongside the property boundary [7.8.10]. This is an improvement, but the proposal would still result in walkers being closer to the kennels, which appear to be situated in the south-eastern corner of the property. This leads to greater likelihood of disturbance to the dogs, the residents and potentially walkers [7.8.15].

7.8.48 The cross-field route would be more disruptive to farming practices than a field-edge route might have been [7.8.24 – 7.8.26, 7.8.28, 7.8.31, 7.8.32 and 7.8.34]. There are cross-field routes in the county [7.8.8a and b] but it is noticeable that the wider Ordnance Survey mapping<sup>223</sup> shows all but two of the rights of way in this area<sup>224</sup> to be field-edge and/or following well established tracks.

7.8.49 The eastern section of the proposed route would run on the north-western boundary of the field. Whilst the addition of a public right of way would have some implications for the owners and occupiers [7.8.38, 7.8.40 and 7.8.41] I consider that the effect of a field edge route would be minimal in terms of land management and potential agricultural production loss [7.8.11].

7.8.50 There would be some impact on land owners, tenants and local businesses. Additional time and cost would arise in relation to the management of land where the cross-field section is proposed to be introduced. There may be opportunities to compensate some points.

### **SOM 4(b) Impacts on other users**

7.8.51 In relation to pedestrian use the impacts would relate to matters under SOM 4(e).

7.8.52 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network.

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<sup>223</sup> NR32-2, Appendix 9

<sup>224</sup> The footpaths between Eldernell and Coates and to the March/Wisbech Road

**SOM 4(c) Impacts on flood risk and drainage**

- 7.8.53 The IDB were identified as owners and occupiers<sup>225</sup> and made a general representation [7.8.13 and 7.8.14]. There was no indication that any impacts would arise from this proposal.

**SOM 4(d) Any other environmental impacts**

- 7.8.54 The reason for 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 [7.8.8c]. Badgers are a protected species and NR decided to alter the proposal, rather than risk disturbance through creation of a right of way in this location.
- 7.8.55 No further work or survey was carried out to determine whether badgers were still using the area [7.8.23].

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.8.56 It has been argued that the proposed route is unnecessary [7.8.21, 7.8.30 and 7.8.39], however, with 22 users in the nine-day census [7.8.3] this crossing falls into the middle range of the affected crossings when considering the level of pedestrian use. As such I consider that the Secretary of State can be satisfied that a route south of the railway would be required if determining to close the crossing.
- 7.8.57 There was evidence in relation to cross-field routes that they were not as easy for the public to use in this particular area [7.8.19, 7.8.27 and 7.8.29] as may be the case elsewhere [7.8.8a]. Taking account of this and the way in which PROW have come into use in the area [7.7.32] the cross-field path would not be as convenient for the public as the existing route.
- 7.8.58 There would not necessarily be any increase in road walking<sup>226</sup> as FP48 ends on Benwick Road in any case [7.8.9]. As part of possible circular walks from Eastrea the distance is not significantly longer [7.8.12].
- 7.8.59 The strategic case behind the Order has been discussed earlier and includes the issues around financial and safety issues [7.8.20, 7.8.35, 7.8.37, 7.8.42 and 7.8.45]. NR accept the crossing to be safe, as otherwise it would be closed under other powers.
- 7.8.60 Whilst the changes in length and direction are not significant, I consider that weight should be given to those who work and walk the land in question with regard to the suitability of the proposal. Taking that evidence into account the proposed route would not be suitable and convenient in terms of maintenance and accessibility.

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<sup>225</sup> NR09, page 1, plots 01 and 02

<sup>226</sup> Dependant on the implementation of C14, Eastrea Cross Drove

**Other matters – consultation/statutory notices**

- 7.8.61 There were concerns in relation to the consultation process [7.8.16 – 7.8.18 and 7.8.43]. NR were satisfied that they had complied with the requirements of consultation<sup>227</sup> [7.8.11]. Whilst there may have needed to be some discretion about publicity in relation to the reason for the change in the route east of P001 [7.8.36 and 7.8.44], I do not consider it reasonable that the affected landowners appear to have had no opportunity to meet with NR, or their representatives, to discuss the matter [7.8.22, 7.8.23 and 7.8.33] and decide whether further work was required, for example site surveys.

**Conclusions**

- 7.8.62 There would be a negative effect on owners and occupiers, particularly in relation to the cross-field section. This section would also be unsuitable for public use and, therefore, inconvenient. Even balancing the strategic matters against the local impact, I consider that the Secretary of State should not include C15 within the Order.
- 7.8.63 Should the Secretary of State be minded to include C15 then consideration could be given to carrying out further site surveys to determine whether a better proposal could be submitted.

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<sup>227</sup> NR05, Statement of Consultation



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

### **Description of the Crossings and Surrounding Area**

- 7.9.1 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. There are roads on either side of the river, also crossed by the railway bridge, with farms and residential properties alongside.
- 7.9.2 Footpath 57 ("FP57") runs along Branch Bank, east of the River Lark, and Footpath 17 ("FP17") runs along the west bank, Padnal Bank. The footpaths cross the railway line, which comprises 2 tracks carrying passenger and freight trains at a line speed of up to 75mph, as passive (footpath) crossings with SLL.
- 7.9.3 The ALCRM score for both crossings is M13. NR say that there is insufficient sighting at the crossings, which are protected by whistle boards between the hours of 06:00-00:00. Both level crossings were temporarily closed due to safety issues at the time of my site visits.
- 7.9.4 The surrounding area is fenland of ditched and farmed land. The larger village of Littleport lies to the north-west, with the River Lark forming a junction with the River Great Ouse.

### **Description of the Proposal**

- 7.9.5 It is proposed to close the crossings to all users, extinguishing the existing public footpath rights. 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.
- 7.9.6 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.

## **The Case for the Applicant, Network Rail**

- 7.9.7 A census survey was carried out in June 2016. As the level crossings were temporarily closed at the time<sup>228</sup>, the data sought to capture instances of pedestrians approaching with the intention to cross the railway line but being prevented from doing so. No users were recorded but it is acknowledged that this would not be representative of 'normal' crossing usage at this location. Three people that provided feedback during the public consultation of leisure use, with 2 rarely using the crossings and 1 using them monthly.
- 7.9.8 The Filled Order includes amendments to the application draft which NR asks the Secretary of State to incorporate in the event that he determines to make the Order. The amendments include changes to Schedule 16 of the draft Order in response to matters raised by the Environment Agency.
- 7.9.9 The principles in the protective provisions have precedent in other made Transport and Works Orders. NR and the EA have been in negotiation to agreeing a set of standard protective provisions to be included in the NR Level Crossing Reduction Orders.
- 7.9.10 The amendments reflect the changes agreed between the parties as at 19 December 2017. The EA raised no additional concerns direct to the Inquiry in relation to the NR note<sup>229</sup>, which was shared with them.
- 7.9.11 There were no objections to the proposed closure of C17.

## **The Cases in Objection**

### **Cambridgeshire County Council (O12)**

- 7.9.12 CCC initially made a holding objection to the closure of C16. Being satisfied with the resolution met through negotiation, CCC withdrew their objection on 19 December 2017.

### **Anthony Bebbington, Environment Agency (O31)**

- 7.9.13 The Environment Agency is an affected landowner in relation to C16, Prickwillow Bridge. The EA is in principle supportive of the closure, although detail is lacking. Further information is required on the extent, type and duration of work to assess the impact on statutory and operational duties, assets and tenants.
- 7.9.14 Where the Order affects land in, over or under a Main River these would be regulated by environmental permits. Schedule 16 of the Order removes the requirement for NR to obtain an environmental permit and would not provide an equivalent opportunity for the EA to consider the proposal and ensure unacceptable impacts on the Main River were avoided.

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<sup>228</sup> Inquiry document OBJ/29/W6/R sets out that the crossings were closed unofficially. Although temporary Traffic Regulation Orders were put in place these had expired by the time of my site visits in early September. The crossings remained closed and unavailable for public use.

<sup>229</sup> Inquiry document NR-INQ-22

- 7.9.15 The EA would normally respond to planning consultations in Flood Zone 2, Flood Zone 3 and within 20 metres of a Main River. Some works are proposed within floodplains and may affect flood flow rates or result in the loss of a floodplain. Schedule 16 should provide the EA with an equivalent opportunity to influence the proposals.

## **Inspector's Conclusions**

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.9.16 The crossings themselves appear unlikely to be used for business purposes. The EA owns land in relation to C16 [7.9.13] and although indicating a desire for greater information has not indicated how the changes would be likely to impact on their land or users.
- 7.9.17 The withdrawn objection from CCC [7.9.12] concerned the lack of a 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. There may be a greater requirement for these, and other, vehicles to take account of additional pedestrians at the railway bridges, however, this is unlikely to impact on any use of the roads.
- 7.9.18 No other matters were raised, and I do not consider that there are likely to be significant impacts.

### **SOM 4(b) Impacts on other users**

- 7.9.19 The identified use was public leisure use [7.9.7]. The impacts would relate to matters under SOM 4(e), which will be discussed below.
- 7.9.20 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network.

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.9.21 The EA objected as these crossings lie adjacent to the River Lark and requested alterations to Schedule 16 of the Order [7.9.14 and 7.9.15]. NR have proposed changes within the filled Order [7.9.8 – 7.9.10], which provide additional opportunities for the EA to ensure that there were no unacceptable impacts on this Main River. As the EA have provided no additional comments on this proposal it appears that their concerns on this matter have been satisfactorily resolved.

### **SOM 4(d) Any other environmental impacts**

- 7.9.22 No matters were raised in this respect. Steps would be put into the banks of the River Lark on either side of the railway bridge on each of the lanes [7.9.5]. This would have some effect on the flora in these areas but that would be a limited area.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.9.23 There would be a small additional distance up and down the embankments to resume use of the footpaths. The length would not be significant, but the embankments are quite steep and so the gradients will need to be carefully considered in construction. Even so the change from level crossings to routes involving two sets of steps may be less suitable for some. However, bearing in mind that the rights of way themselves are quite long, it seems unlikely that anyone using these routes would find the steps unsuitable for their use.
- 7.9.24 The addition of the steps will actually mean that there are shorter routes available to users on each side of the bridges. This 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.
- 7.9.25 Steps would increase the maintenance liability for CCC in comparison to the existing routes. However, CCC were content that the side agreement<sup>230</sup> dealt adequately with such matters.

**Public Sector Equality Duty**

- 7.9.26 No DIA was carried out following scoping of this proposal. As I have noted above in relation to suitability, 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.

**Conclusions**

- 7.9.27 Taking account of all above, and all other matters raised, I consider that the Secretary of State should include C16 and C17 within the Order.

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<sup>230</sup> NR-INQ-29

## **7.10 C20, Leonards**

### **Description of the Crossing and Surrounding Area**

- 7.10.1 Soham Footpath 101 ("FP101") is an unsurfaced path running north-easterly through agricultural fields from Mill Drove<sup>231</sup>, a public road, to join Footpath 100 ("FP100"), which provides access to the south-western side of the village of Soham. There is a vehicular level crossing on Mill Drove to the north-west of Leonards Crossing. Footpath 114 ("FP114") and BOAT 113 ("BOAT113") provide links to the west of Mill Drove.
- 7.10.2 The passive (footpath) level crossing has kissing gates in the railway boundary fence with SLL. The Ely to Bury St Edmunds railway line at this crossing comprises 2 tracks, carrying passenger and freight trains, with a line speed of up to 75 mph.
- 7.10.3 Soham is a large village lying to the south-east of the City of Ely and north-east of the City of Cambridge. The village of Wicken, with Wicken Fen, lies to the south-west and Fordham to the south-east.
- 7.10.4 The surrounding land, particularly to the west of the crossing, is a fenland area of ditched and farmed land. Mill Drove itself is a cul-de-sac to normal vehicular traffic to the south, with Mill Drove Farm and a few residential properties along its length. There are PROW at the southern end providing continued access.

### **Description of the Proposal**

- 7.10.5 The ALCRM score for this level crossing is D6. 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 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.
- 7.10.6 Level crossing users would be diverted north to Mill Drove level crossing, which has an ALCRM score of D4. A 2m wide unsurfaced footpath approximately 260m in length would be created on the east side of the railway connecting Mill Drove to FP101. A composite steel and timber footbridge (6m in length) would be required to cross an existing drainage ditch adjacent to Mill Drove along the new footpath route.
- 7.10.7 FP114, west of Mill Drove, would be reinstated for approximately 350m as an unsurfaced path from the point where it meets BOAT113 in the south to the field boundary to the north east. North of this point a new 2m wide unsurfaced footpath would be created along the field margin around Mill Drove Farm (approximately 230m in length) and users would then make use of the existing verge and carriageway on Mill Drove, crossing the railway at Mill Drove level crossing.
- 7.10.8 Crossing infrastructure would be removed and fencing installed to prevent trespass onto the railway.

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<sup>231</sup> Also referred to as Mill Drove Road

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## The Case for the Applicant, Network Rail

- 7.10.9 This crossing forms part of circular walks from Soham, providing connections to the wider network to the south/west. To the east of the railway, closest to Soham, the footpath network crosses paddocks and water courses, with a number of sharp turns. To the west of the railway, FP101 crosses an arable field and then meets Mill Drove. Most users are likely to use the road to head south, connecting with BOAT 113 or other routes further south because the immediate connection, FP 114, has been severed by farm buildings and is effectively unusable.
- 7.10.10 NR's proposals would take users through pleasant paddocks, in the field margins, to the east of the railway, joining Mill Drove close to the existing AHB railway crossing. Users would then walk a short distance on Mill Drove before joining a replacement footpath connecting to FP 114 or continue on Mill Drove to BOAT 113. The alternative route is not significantly longer than the current route and NR believes that it is a suitable and convenient replacement for existing users.
- 7.10.11 The proposals would not materially affect the amenity, suitability or convenience of the route. Mill Drove is lightly trafficked with 118 vehicles per day at a speed of 30 mph. The proposed route would not increase on-road walking: by providing a connection to FP 114, on-road walking could be reduced. The route to the east of the railway would provide a very high standard of amenity, likely to be more pleasant than the cross-field path to the west of the railway which would be lost.
- 7.10.12 There was no clear articulation as to how these proposals would diminish the recreational walking network. New paths would be created, including the reinstatement of lost connections and new circular walks would be possible. The exaggerated language used to describe the proposal, with reference to "vandalism" and the suggestion that the proposal could undermine the health of Soham's residents, belies a failure to deal with the detail of the proposal. In cross-examination Cllr Hunt accepted that the proposed alternative route "may be equally pleasant".
- 7.10.13 The concerns about the surfacing and usability of the route to the east of the railway relate to detailed design and are governed by the approval's process which is in CCC's hands. They are not material to the underlying merits of the proposal, which is presumably why they were not pursued in closing submissions.
- 7.10.14 A nine-day census survey in June 2016 recorded 181 pedestrians using the level crossing. Of the 6 people giving feedback during the public consultation 1 indicated that they used the crossing daily, 1 weekly and 4 monthly. 5 respondents stated that they used it for leisure and 1 for other purposes, which were not identified. The crossing is used regularly by a relatively high number of people to access the wider network.
- 7.10.15 As accessibility at the current crossing is likely to restrict access for some people, especially for those in wheelchairs or with pushchairs, it was felt that the new route may improve accessibility through

diversion to a flat and tarmacked crossing. Following the scoping study, therefore, it was considered that a DIA was not required.

- 7.10.16 The identified common land lies within the highway boundary and so there was no need for an application to be made under the Commons Act 2006 for works on the land.
- 7.10.17 The proposals at C20 provide a good alternative route which is undoubtedly suitable and convenient; indeed, in some ways it represents an enhancement from the present situation.
- 7.10.18 OBJ/18 concerned lack of detail and information provided on the proposed temporary acquisition of their land. The objection was also concerned about the adequacy of consultation. NR complied with the legislative requirements of the 2006 Rules in relation to notification and the content of the notice was consistent with the Rules and practice. NR will continue to engage with the objector to provide the detailed information required.



## **The Cases in Objection**

### **Jill Tuffnell (O5)**

- 7.10.19 Ms Tuffnell was an interested person in her own right but gave evidence to the Inquiry as part of the Ramblers' case.
- 7.10.20 Ms Tuffnell has been a resident of Cambridge since 1974. She joined Cambridge Rambling Club in 1976 and has been a member of the Ramblers for around 30 years.
- 7.10.21 Walkers approaching Soham from Wicken, where Leonards Crossing provides a direct, pleasant route into the village, would be expected to use FP114 from Bracks Drove (BOAT 113) to a new footpath linking north to meet Mill Drove. This is an unattractive dog-leg, removing the sense of a direct, convenient route. Length is not the only consideration when evaluating an alternative route.
- 7.10.22 The cross-field route of FP114 was not available in September 2017, as the field was ploughed with no reinstatement. I have never seen this path reinstated, despite there being a legal requirement to do so. In relation to the proposed diversion of FP 114 west of Mill Drove there was no clear field edge due to heaps of straw etc. There was a flooded area which may be a regular problem.
- 7.10.23 Due to a deep ditch and hedge it was not possible to see the proposed diversion north of Mill Drove crossing. The fields east of Leonards crossing carry a 'Private — no right of way' sign, backed up by strands of barbed-wire.
- 7.10.24 Mill Drove level crossing has lights and half barriers but it crosses on the diagonal so that a wider stretch of track has to be crossed by walkers than at Leonards, which is at a right angle. As there are only half barriers there is nothing to stop a pedestrian from crossing the line, even when the lights are on. Mill Drove crossing is close to a bend in the track and has poor sightlines in comparison to Leonards.
- 7.10.25 Pedestrians also have to share the crossing with vehicular users, with Mill Drove subject to the National Speed Limit (60 mph). Vehicles, such as the HGV observed on Mill Drove, can prove just as dangerous to walkers as trains. The HGV completely covered the track, causing pedestrians to move onto the verge.
- 7.10.26 Trains using this line regularly sound a horn when approaching a level-crossing and so can usually be heard several minutes before they arrive. None of the 4 freight trains and one passenger train observed in the 40-minute period travelled fast.

### **Cambridgeshire County Council (O12)**

- 7.10.27 CCC objected to this proposal as the proposed alternative route would be longer for the majority of those who use it. The proposed diversion would be 395m, 260m of which would be on-road.

- 7.10.28 It was noted that Cllr Hunt described the proposal as "An act of vandalism to consider closing it". Geoffrey Fisher, on behalf of Soham Town Council, advised that if the proposals went ahead, he would not use the proposed alternative route because there were better and nicer paths that he would walk instead.
- 7.10.29 The alternative route would not be used due to the loss of convenience and enjoyment in comparison to the existing route. The proposed diversion would not be equivalent to a ramped bridge as a bridge would be on the same desire line. The crossing closure would therefore have a significant impact on the local rights of way network and its users.
- 7.10.30 The CCC Senior Public Health Manager of Environment and Planning indicated that a proposed diversion, as a result of closing a crossing, might not be suitable for particular users, which may affect continued use of that route, or of walking at all. Habits can take 6-18 months to form and so if a closure disrupts a pattern of behaviour, such as walking, that may not re-establish, or it may take months to form a new habit i.e. finding another route.
- 7.10.31 As this crossing is part of a route used by a local Heartbeat Group, which is for people who have had a heart attack, this falls within the definition of a group of "People living with a long-term limiting illness" contained in the DIA scoping report. This crossing therefore warrants a full DIA, as the loss of this route may affect the health outcomes of this group if the new route proves unpopular.
- 7.10.32 Encouragement of healthy lifestyles is one of the six Priorities of the CHWBS<sup>232</sup> and connects to SOA 'A safer and health-enhancing activity' in CCC's ROWIP<sup>233</sup>.

**Guto Edwards, Savills on behalf of The Trustees of Alison Susan Gray 2008 Discretionary Settlement (O18)**

- 7.10.33 There had been insufficient information and detail on the plan and notice. No information had been provided as to the extent and detail of the temporary works. No direct consultation had been undertaken ahead of the service of draft notice.

**Ramblers Association (O26)**

- 7.10.34 The Ramblers requested that the closure of this crossing be withdrawn from the proposed Order so that a better solution can be found.
- 7.10.35 Ms Tuffnell's evidence to the Inquiry was that the proposed alternative was neither suitable nor convenient. The diversion of FP101 would be around three sides of a square, in parts crossing land prone to flooding and in part next to land with established brambles. There were no commuted sums provided to the landowner who would have to deal with brambles encroaching from the side and it would be likely that this would present a long-term maintenance or enforcement issue.

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<sup>232</sup> CCC Core Document, Bundle 1, Tab 18

<sup>233</sup> CCC Core Document, Bundle 1, Tab 17, page 9

- 7.10.36 The diversion of FP114 was to a route in a low-lying clay field, which would not be used as it would be difficult to walk over, forcing users to walk further on Mill Drove Road. It was accepted that Ms Tuffnell used Mill Drove Road but stated that this was not a pleasant experience as it is used by HGVs. The proposal would mean walkers came back on themselves, adding a long stretch of road walking; somewhere between a third again or perhaps double the present amount. Whilst this may not be significant as part of a longer walk from say Soham to Wicken it would be significant as part of a shorter circular walk.
- 7.10.37 The diversion of FP101 around three sides of a square and the proposed doubling back is unsuitable and inconvenient. In connection with C11 A Furlong Drove/Byway 33 Ms Tilbrook said that people did not generally like to feel that they were doubling back on themselves but here said that it was not a problem; the Ramblers disagree.

### **Cambridge Local Access Forum (O52)**

- 7.10.38 FP101 is one of several rights of way which provide a direct link from Wicken to Soham. These recreational links are very popular, especially with the development of the National Trust's Wicken Fen Vision and the growing population in Soham. The route is regularly used as part of a circular walk.
- 7.10.39 In relation to the proposed changes to FP114 this has not been reinstated in recent years and most walkers prefer to use BOAT113. In winter the field crossed by FP114 can be very muddy.
- 7.10.40 The proposed diversion to the east of Mill Drove is around 490m, 300m longer than the existing 190m of FP101, and takes walkers around three sides of a square. This is longer and more inconvenient.
- 7.10.41 The proposed diversion takes walkers to another level crossing so there is no increased safety; just a longer and less pleasant walk. The railway line is lightly used, with excellent sightlines at Leonards Crossing. There have been no recorded incidents of accidents. There is no gain in safety, just a saving in maintenance for NR.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Site visit

7.10.42 I made an unaccompanied site visit on 6 September 2017, viewing the proposal so far as possible from existing PROW and roads. Given the matters raised during the Inquiry I requested permission, via NR, to access the land crossed by the proposed route to the east of the railway. I made this additional unaccompanied site visit on 20 February 2018.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.10.43 There was no indication of any negative impacts in relation to these matters.

7.10.44 In relation to the changed use on Mill Drove the automated traffic count reveals relatively low levels of use and low speed [7.10.11] with mean speeds of 16 – 20 mph<sup>234</sup>. Given the wide verges available, and the existing vehicular use for access to business and properties, the additional pedestrian use of different sections of Mill Drove would be unlikely to lead to issues for access to property and business.

7.10.45 The proposed change to FP114 on the western side of Mill Drove would lead to a positive impact on the landholding through which it currently passes<sup>235</sup>, as it removes the possibility of enforcement action to reinstate the right of way in this area. I consider that this would have greater impact on the landholding(s) than the provision of the proposed route<sup>236</sup> outside the area of more intensively used land.

7.10.46 The proposed route of FP101 on the eastern side of the railway would cross land in different ownership to the current route, although one of the landowners/occupiers was also noted as an occupier of the land crossed by the existing route<sup>237</sup>. Concerns were raised by Ramblers that there were no commuted sums for the landowner to deal with brambles encroaching on the route<sup>238</sup>, which could result in enforcement action.

7.10.47 No objection or comment has been made by the affected landowners 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. 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

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<sup>234</sup> NR32-2, Appendix 1

<sup>235</sup> NR08, Sheet 20, P084 – P085

<sup>236</sup> NR08, Sheet 20, P084 – P086

<sup>237</sup> NR08, Sheet 20/NR09, pages 53 – 55

<sup>238</sup> HA80, section 154

owners and occupiers to apply for compensation<sup>239</sup>. Taking all these matters into account I consider that this would not adversely impact the business. The public rights would remain protected under the HA80 provisions.

- 7.10.48 O18 relates to the freehold owners or reputed freehold owners of the land crossed by the existing route<sup>240</sup>. The temporary works [7.10.33] appear to relate to the closure of the crossing [7.10.5 & 7.10.7]. No further evidence was provided to the Inquiry by this affected party and NR would need to continue dialogue in relation to the access and works [7.10.17]. I consider that the Secretary of State can be satisfied that there are no likely negative impacts arising.

#### **SOM 4(b) Impacts on other users**

- 7.10.49 The main identified use was public leisure use [7.10.14]. The impacts would relate to matters under SOM 4(e).
- 7.10.50 Although a small area of common land would be affected, this is already part of the highway boundary and the available use would continue [208].
- 7.10.51 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network.

#### **SOM 4(c) Impacts on flood risk and drainage**

- 7.10.52 There is no indication that any impacts would arise from this proposal.

#### **SOM 4(d) Any other environmental impacts**

- 7.10.53 No matters were raised with regard to this matter.

#### **SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.10.54 The wider Ordnance Survey mapping<sup>241</sup> shows the main off-road networks to the south and west of the crossing, with links to Wicken to the south-west. There are a number of possible circular routes incorporating the crossing and the location close to the village gives rise to the highest pedestrian use of all the footpath crossings<sup>242</sup> [7.10.9 & 7.10.14].
- 7.10.55 A main concern related to the changes in direction that would be introduced [7.10.21, 7.10.35, 7.10.37, 7.10.38 & 7.10.40] and how that might affect future use [7.10.28 & 7.2.64]. Although NR felt the language was exaggerated [7.10.12], people feel passionately about such matters; the changes could have detrimental effects on use and, therefore, health [7.2.64 & 7.10.32].

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<sup>239</sup> NR29, paragraph 3.7.4

<sup>240</sup> NR08, Sheet 20/NR09, pages 54 & 55, plot numbers 10, 11 & 11A

<sup>241</sup> NR32-2, Appendix 9

<sup>242</sup> C12, Silt Drove has the highest use but is a road

- 7.10.56 For those taking a short circular walk from Soham I do not consider it likely that the changes would stop use; the overall distance would be similar and the changes in direction would not be of such significance. Longer circular walks incorporating the routes to the south would be more likely to be completed via routes to the east, on Cherrytree Lane, or continuing north on Mill Drove rather than returning back to FP101 on the proposed route.
- 7.10.57 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 [7.10.9]. 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 BOAT113 without needing to follow Mill Drove. Although FP114 may not have been available [7.10.22] there are procedures to deal with such matters. I consider that following this route and Mill Drove would provide a similar link to following BOAT113 and the existing route of FP101. Whether following FP114 or BOAT113 [7.10.36] 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 used in this context [7.10.29].
- 7.10.58 Whilst people were clearly unhappy at the proposed changes [7.10.28] the real effect is difficult to predict given the lack of clarity on the amount of use which might be of shorter or longer circular routes or of longer village to village routes [7.10.38]. However, there would be other routes available where people did not find the proposed route an acceptable alteration to their desire line [7.10.29].
- 7.10.59 It is likely that there would be greater use of Mill Drove by pedestrians. Whilst not favoured by some, I consider the overall layout and use, in terms of volume, type of traffic and speed, is not incompatible with pedestrian access [7.10.25 and 7.10.37].
- 7.10.60 Issues regarding the maintenance and desirability of FP114 to the west of the proposed diversion of that route [7.10.22] are existing matters unrelated to the proposal. CCC initially raised matters regarding the implications for them in relation to maintenance of the proposed route. These issues appear to have been adequately dealt with under the side agreement so far as CCC were concerned<sup>243</sup>. They would ultimately be able to refuse certification of the highway under article 16(11) of the filled Order [7.10.13] if necessary.
- 7.10.61 Users would be diverted to Mill Drove and, if then travelling south, would use an existing AHB crossing of the railway. 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 are approaching. Although users would be able to choose to cross here even when the barriers were active [7.10.24]

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<sup>243</sup> NR-INQ-29

this would be no different to user choice in relation to when to cross at Leonards, which is a passive crossing with no warning system [7.10.2].

- 7.10.62 The ALCRM score for Mill Drove level crossing is D4 and so scored as higher risk than Leonards at D6 [7.10.5 and 7.10.6]. Diverting more users to the Mill Drove crossing may further increase the collective risk, due to increasing the number of potential conflicts. However, according to the strategic argument, the reduction in the number of crossings would allow further investment in those crossings left on the network.
- 7.10.63 Taking all of these points into account I consider that the proposed changes are not ideal and may lead to some users altering their routes, and/or potentially taking less exercise.

### **Public Sector Equality Duty**

- 7.10.64 The criteria set out in the PSED section<sup>244</sup> were used in the scoping exercise to inform the decision-making process about which crossings would require a full DIA. In relation to C20, taking account of the existing route availability, the decision was taken that no DIA was required [7.10.15]. However, as the route was identified as being used by the local Heartbeat group [7.10.31].
- 7.10.65 The Heartbeat Group contributes toward CCC policies [7.10.32] but there would be limited accessibility on the existing route for certain types of user [7.10.15]. CCC advise that changes might affect use [5.13], 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.
- 7.10.66 In this case some inconvenience as a result of the proposal has been identified for all users. The census data shows this to be the most used of the footpath only crossings [7.10.14] with only C12, Silt Road having greater pedestrian use. 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. Taking this into account, along with the proximity of C20 to the residential area of Soham, and the links to and from that area, it is likely that there are a higher number of users with protected characteristics.
- 7.10.67 There is a fine balance as to whether the proposal would be likely to lead to a failure to advance equality of opportunity. It seems likely that there are those with protected characteristics who would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population). This likelihood that the PSED would not be met adds weight to my recommendation not to include this crossing in the Order.
- 7.10.68 However, I recognise that the Secretary of State may be satisfied that on the evidence available that the proposal would not mean that this group would experience disproportionate effects (over and above the

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<sup>244</sup> Section 5 of this Report

effects likely to be experienced by the rest of the population). If so satisfied, then it is open to him to include the crossing in the Order.

### **Conclusions**

- 7.10.69 Taking account of all above, and all other matters raised, I consider that the Secretary of State should not include this proposal within the Order. However, the Secretary of State could include this proposal within the Order having determined, on the available evidence, that there would be no disproportionate effect on those with a protected characteristic.



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

### **Description of the Crossings and Surrounding Area**

- 7.11.1 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.
- 7.11.2 The routes begin on Station Road, the A142, running south-east from the City of Ely, which has footway providing access to the footpaths. The western route is Footpath 23 ("FP23"). It is part of the Cawdle Fen Walk<sup>245</sup>, a circular route from either Ely or Little Thetford, and the Ouse Valley Way and Fen Rivers Way, which are long distance paths.
- 7.11.3 Footpath 24 ("FP24") starts at a point almost directly opposite Queen Adelaide Way, which has a footpath running parallel to it providing wider links. This route is also part of a national cycle network route. The proposed route in this location is already available and in use as part of the cycle route.
- 7.11.4 A short distance to the south of Ely, and Ely Railway Station, the railway line splits with the eastern Ely to Bury St Edmunds railway line (SOB2) crossing the river by way of a railway bridge. Both footpaths cross the railway on this bridge with the crossing of FP24 referred to as Newmarket Bridge, C21, and FP23 Wells Engine, C22. There are existing private vehicular rights at both crossings.
- 7.11.5 FP24 is a passive (footpath) level crossing with wicket gates in the railway boundary fence and SLL. FP23 is a passive user worked crossing with a telephone and kissing gates in the railway boundary fence with SLL. The railway line is single track, carrying passenger and freight trains, with a line speed of up to 40 mph on the western route and up to 60 mph on the eastern, furthest from the station.
- 7.11.6 The ALCRM score for Newmarket Bridge is C10, with a 9-day camera census showing use by 152 pedestrians. For Wells Engine the ALCRM score is C4 and the census recorded 69 pedestrians using the crossing. Users have been observed trespassing on the railway bridge to create a circular walk using both crossings.
- 7.11.7 The crossings are close to the City of Ely, with the large village of Soham to the south-east. The general surrounding area appears to be ditched and fenced farmed fenland with several villages situated around the City. A number of main roads and the railway line provide connectivity.

### **Description of the Proposal**

- 7.11.8 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. Users to the east, C22, would be diverted onto a new route under the bridge resulting in a diversion of around 190m.

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<sup>245</sup> Core Documents, CCC, 46

- 7.11.9 Pedestrian crossing infrastructure would be removed, and fencing installed to prevent trespass on the railway. New signage would be provided. The private rights would be maintained.

### **The Case for the Applicant, Network Rail**

- 7.11.10 The principal issue at these crossings relates to flood risk. They are, otherwise, very convenient diversionary routes since the user simply passes under, rather than over, the railway. It is accepted that the alternative routes lie in the floodplain, but there is no evidence of anything other than occasional flooding. NR has not engaged in extensive hydraulic modelling to quantify the risk, but it is neither necessary nor appropriate to do so given that footpaths are, in any event, water compatible developments in the sense that they may (and regularly do) pass through flood plains.
- 7.11.11 The evidence of Cllr Bailey was that the area would not be flooded every year and so for the vast majority of the time, the routes would be passable. NR has suggested that the occasional issue is mitigated by the presence of signage to indicate that the route may be impassable in times of flood. It would be very obvious to those in the area when the River Great Ouse is in flood.
- 7.11.12 It is not accepted that a user could in times of flood simply divert over the railway. It is a criminal offence to trespass on the railway, and that would displace any arguable common law rule about deviation to avoid obstacles.
- 7.11.13 At C21, the proposed route is a well-used cycleway which forms part of a national network. It does not appear that the presence of that cycleway in the flood plain has presented practical problems.
- 7.11.14 There were concerns about vandalism under the railway bridge, but this would not be a good reason to resist the proposals, not least because anti-social behaviour equally affects level crossings. In this location there is a history of misuse by pedestrians using the level crossing accesses to get onto the bridge across the River, and then cross the river in the empty track bed. This factor points towards making the Order, rather than the other way.
- 7.11.15 The occasional obstruction of the alternative routes in times of flood is not a good reason to reject the Order proposals which are plainly sensible solutions in these locations.

## The Cases in Objection

### Cambridgeshire County Council (O12)

- 7.11.16 These crossings should not be closed. It is common ground between NR and CCC that the alternative routes fall within high risk flood plains; when flooded substantial diversions are required. It is CCC's view that these diversions would cause significant inconvenience to users. One path is a promoted route and the other is also a cycle path.
- 7.11.17 NR have not provided any flood data to assist the Secretary of State when considering these crossings. It is not for those opposing the closure to prove that flooding will be problematic, but for those proposing the Order to prove that it will not. CCC say that NR has failed to discharge its burden of proof; without the data no objective assessment of the impact of the closures can be made.
- 7.11.18 NR have, quite rightly, stated that there is no restriction or reason why, from the EA's point of view, a path cannot exist within a flood plain. However, the existing path runs along the flood bank and is not subject to flooding; the proposed path on the flood plain would cause potential problems for users, having a significant impact on the use of the local path network.
- 7.11.19 NR suggested there would be no right to deviate from the proposed footpath during flood periods. CCC submit that the common law right to deviate<sup>246</sup> may apply. It was clarified that the whole of the proposed new route would run on land owned by NR.
- 7.11.20 The law relating to the common law right to deviate is equivocal but in *Taylor v Whitehead (1781)*<sup>247</sup> Lord Mansfield said "[Highways].... are for the public service, and if the usual track is impassable, it is for the general good that people should be entitled to pass onto another line". Later case law suggests that the right to deviate may only apply when a landowner has caused the obstruction or foundrous conditions. Whilst NR could not be said to be responsible for the flooding, they would be responsible for the path being moved into the area that is known (in advance) to be liable to flooding, and therefore they are the creators of the situation. If the common law right to deviate is considered to apply, then if the proposed new path becomes flooded or foundrous the public may use other land in the same ownership (namely cross the railway line) to continue their journey.
- 7.11.21 This issue creates ambiguity, which the Secretary of State must take into consideration as part of the decision-making process.
- 7.11.22 With regard to the Wells Engine crossing (C22) the CCC's PROW Officer, Karen Champion, raised concerns regarding the suitability of the proposed route in respect of crime, fear of crime, anti-social behaviour and future maintenance liability. These factors may all have a negative impact on the use of this promoted route.

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<sup>246</sup> OBJ-12-INQ-08 (attached)

<sup>247</sup> [1781] 2 Doug 745, 99 ER 475

**David Robinson (O17)**

- 7.11.23 Mr Robinson was an interested person in his own right but gave evidence to the Inquiry as part of CCC's case.
- 7.11.24 Mr Robinson has lived in Grantchester since 2007 and is retired from employment in an electrical wholesaler. He has been a keen train and railway observer and photographer for over 30 years and, on average, does this 3 or 4 times a week, sometimes more depending on the weather and time of the year. He often uses PROW to visit good observation spots.
- 7.11.25 Mr Robinson was unable to attend any of the consultation sessions that NR undertook as there were none scheduled near where he lives. He believes this to be a weakness in NR's consultation process as some people who would be impacted by the TWAO Application would have had to travel unreasonable distances just to attend consultation processes, even if they knew about them.
- 7.11.26 The notices left at crossings, purportedly to inform the public about the TWAO process, were not sufficient and were generally unhelpful. They were left in illogical and non-prominent places and it was not obvious to the casual passer-by what they referred to. The notices were too long and Mr Robinson does not believe that many users would have bothered to read them. As the notices were not crossing specific, referring to the TWAO as a whole, they did not bring the attention to users that the works would affect that specific crossing.
- 7.11.27 Mr Robinson has used the path with crossing C22 for 20 years at least twice a week. He walks south along the river bank, then, with permission, west after the crossing to the farmer's private crossing. He enjoys the walk, which provides an opportunity for his hobby of train observation.
- 7.11.28 NR's proposals would send users down the bank under the bridge. This is not a suitable diversion due to the area being a flood risk. Mr Robinson has seen it flooded during winter months and users would not be able to walk the route then. This would be a loss of convenience and enjoyment of the route, but more importantly also a safety issue if people are put at risk of falling into the river.
- 7.11.29 The crossing has good sightlines on either side and the trains do not run quickly through the area, because of the tight curve into Ely station. NR are proposing to divert users from what seems to be a relatively safe crossing onto a flood plain.

**Ely Group of Drainage Boards (O29)**

- 7.11.30 The Ely Group of IDBs is a consortium of ten Drainage Boards covering 47,000 hectares of the Fens, providing water level management via 29 Pumping Stations. Board consent is required for works on watercourses within the Boards District and for any works within nine metres of a Main Drain. The Pumping Stations have limited capacity

and so unattenuated surface water discharge is not allowed, with new discharges requiring Board consent.

- 7.11.31 C22, Wells Bridge, is used for access to flood risk assets and the Board would require the access right to remain.

**Anthony Bebbington, Environment Agency (O31)**

- 7.11.32 The Environment Agency is an affected landowner in relation to C22, Newmarket Bridge. The EA is in principle supportive of the closure, although detail is lacking. Further information is required on the extent, type and duration of work to assess the impact on statutory and operational duties, assets and tenants.
- 7.11.33 Where the Order affects land in, over or under a Main River<sup>248</sup> these would be regulated by environmental permits. Schedule 16 of the Order removes the requirement for NR to obtain an environmental permit and would not provide an equivalent opportunity for the EA to consider the proposal and ensure unacceptable impacts on the Main River were avoided.
- 7.11.34 The EA would normally respond to planning consultations in Flood Zone 2, Flood Zone 3 and within 20 metres of a Main River. Some works are proposed within floodplains and may affect flood flow rates or result in the loss of a floodplain. Schedule 16 should provide the EA with an equivalent opportunity to influence the proposals.

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<sup>248</sup> Note that the EA did not provide further evidence to the Inquiry. The EA did not identify which six sites should be regulated under environmental permits as they were in, over or under a Main River. These crossings are alongside the River Great Ouse and, therefore, would meet this requirement.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.11.35 The private rights would be unaffected by the proposals [7.11.9 and 7.11.31]. There would be no impact in relation to such existing access and use.

### **SOM 4(b) Impacts on other users**

7.11.36 In addition to the pedestrian use C21 – on the proposed route – is available for use by cyclists. The closure of C21 would result in greater pedestrian use of the route underneath the bridge. Unfortunately, no surveys of that route were provided and so the existing levels of use are unknown.

7.11.37 It should be noted that there was at least some use of C21 by cyclists, but this has been included in the pedestrian use<sup>249</sup>. The dated photograph shows a cyclist on this crossing on Sunday 19 June 2016<sup>250</sup>.

7.11.38 There may be some potential for conflict between users. However, the route of FP24 north and south of the railway 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. As a result, I consider that the impact of this additional shared area would not be significant for either walkers or cyclists.

7.11.39 Additional issues relating to the user impacts would relate to matters under SOM 4(e).

7.11.40 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network.

### **SOM 4(c) Impacts on flood risk and drainage**

7.11.41 The IDB made a general representation [7.11.30] and the EA similarly commented [7.11.32 – 7.11.34]. The private access required by these bodies would not be affected [7.11.9] and so there would be no impact on inspection and maintenance in connection with flood risk.

7.11.42 No flood risk assessment was made by NR despite the fact that the proposed routes would be moved from the top of the flood banks onto land adjacent to the main river, part of the functional flood plain for the River Ouse [7.11.17]. This was due to rights of way being water compatible developments [7.11.10 and 7.11.18]. Witness evidence referred to flooding in this area [7.11.11, 7.11.28].

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<sup>249</sup> NR25, C21, Footnote page 6

<sup>250</sup> NR25, C21, Footnote page 5

- 7.11.43 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, Newmarket Bridge and for C22, Wells Engine, a gravel/stone surface footpath<sup>251</sup>. Fencing within the flood plain could affect the volumetric flow rate of water in or flowing to or from any drainage work<sup>252</sup>. Schedule 16 to the Order would apply such that the EA would be required to approve plans prior to construction of the works.
- 7.11.44 Taking these matters into account I consider that there is a potential effect on flood risk and drainage. This is particularly the case for C22, where there is no existing structure and the proposal would affect a greater proportion of the flood plain [7.11.13], even taking account that the route would run alongside the railway bridge for most of the length, which will itself impact on the floodplain. It does not appear that the development would be appropriate in what appears to be the functional floodplain, where water has to flow and be stored in times of flood.
- 7.11.45 The proposed Order would provide protection with the appropriate authority, the EA, able to comment on the proposal provided they did so within 2 months of plans being submitted to them [7.11.34].

**SOM 4(d) Any other environmental impacts**

- 7.11.46 No issues were raised in relation to this matter.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.11.47 With regard to safety the routes would be fenced and so there would not appear to be a risk from walking near the river itself [7.11.28]. In relation to vandalism under the railway bridge [7.11.22] I noted graffiti on the bridge to the proposed route in connection with C21, Newmarket Bridge; it is likely that similar issues would arise in relation to C22, once it became more accessible.
- 7.11.48 I do not consider that misuse of the existing routes [7.11.14] is relevant to whether current – legitimate – users would find using a more enclosed area, with evidence of anti-social behaviour evident, discouraged their use. However, as discussed at the Inquiry most use is likely to be in daylight, as these do not appear to be part of commuting routes<sup>253</sup>. The nuisance of anti-social behaviour would not be likely to significantly reduce the use of the routes.
- 7.11.49 Neither route adds significantly to the length of the existing rights of way as they stand. However, if a flood event meant that the proposed route was unavailable then the required diversion could be substantial

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<sup>251</sup> NR12, Design Guide

<sup>252</sup> "drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring.

<sup>253</sup> NR32-1, 2.16.4 & 2.17.4

[7.11.16] as is evident from the wider Ordnance Survey mapping<sup>254</sup>. I agree with the point made at the Inquiry that users travelling from Ely, to the north, would quickly realise there was an issue and be able to turn back. However, those travelling south to north may travel some distance, despite the suggestion from a NR witness that they may have already found the route blocked earlier in their journey.

- 7.11.50 Whilst I consider that CCC are theoretically correct in their analysis that common law would allow users to divert across the railway line to continue journeys in times of flood [7.11.19 and 7.11.20]. However, as NR point out, the effect of the criminal offence in relation to crossing the railway would override the common law defence [7.11.12]. Nonetheless, whether or not there is legal ambiguity [7.11.21], the practical situation on the ground may lead to users continuing over the railway crossing at such times, particularly if existing users do not perceive the crossing to be a risk for them [7.11.27 and 7.11.29].
- 7.11.51 Although suggested that the events would be occasional [7.11.15] the lack of evidence on the likelihood and duration of flooding is unhelpful in clarifying the likely impact of the proposal [7.11.17]. The suggestion of mitigation by signage [7.11.11], other than generalised warnings of the possibility of flood, would be impractical for the highway authority to manage, regardless of the frequency, or infrequency, of the event.
- 7.11.52 The information that is available points to the importance of these routes currently, with both being part of promoted routes [7.11.2 and 7.11.3] and falling in the top third of the routes affected by the Order in relation to the pedestrian use as recorded by the census [7.11.6]. It was said at the Inquiry that the Ely local plan includes 3,000 new dwellings in north Ely, with part of the rationale relating to access to the countryside, which is important for mental and physical health. It was also indicated that the District Council were working on district wide tourism strategy depending on walking routes.
- 7.11.53 Whilst the proposal would not result in reduction of routes available, the potential effect of flooding may reduce their convenience and suitability overall. However, in relation to C21, Newmarket Bridge, the proposed route would follow the existing cycle route, which is already part of a national route. The provision and promotion of this route suggests that it is a suitable alternative to the route over the crossing.
- 7.11.54 In relation to C22, however, there is no existing route on this western floodplain and the area is greater than the eastern area.
- 7.11.55 In relation to C21, Newmarket Bridge I consider that the Secretary of State can be satisfied that the proposed route would be suitable and convenient for the proposed use. However, for C22 the lack of information on the likely flooding events, does not assist in determining that the route would be suitable and convenient for users.

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<sup>254</sup> NR32-2, Appendix 9



**Other matters – consultation/statutory notices**

- 7.11.56 There were concerns in relation to consultation process [7.11.25]. Concerns were also raised about the effectiveness of the notices posted regarding the Order [7.11.26]. NR were satisfied that they had complied with the requirements of consultation and the 2006 Rules<sup>255</sup>.

**Conclusions**

- 7.11.57 In balancing all the relevant matters, I consider that the Secretary of State should include C21 within the Order but that C22, Wells Engine, should not be included.
- 7.11.58 However, should the Secretary of State be satisfied that detailed design and the oversight that would be provided by the EA would be sufficient to deal with the flood risk issues then C22 could also be included.

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<sup>255</sup> NR05, Statement of Consultation

## **7.12 C24, Cross Keys**

### **Description of the Crossing and Surrounding Area**

- 7.12.1 Footpath 50 ("FP50") runs in a north-easterly direction from bridleway 25 ("BR25") and crosses the Ely to King's Lynn railway line (BGK) to the north-east of the City of Ely. The village of Littleport lies to the north.
- 7.12.2 FP50 joins Footpath 15 ("FP15") which runs along the bank of the River Great Ouse and is promoted as part of the Fen Rivers Way. The general surrounding area is fenland with ditched and farmed land. The right of way is situated within rural farmland.
- 7.12.3 C24 is a passive footpath level crossing, with stiles in the boundary fences on both sides of the railway line and SLL signs. The railway has two tracks carrying freight and passenger trains, with a line speed of 80mph. The ALCRM score is D7 and a 9-day camera census recorded use by 32 pedestrians.

### **Description of the Proposal**

- 7.12.4 It is proposed to close C24 to all users, extinguishing the existing public footpath rights.
- 7.12.5 To the west of the railway users would be diverted along a new 2m wide unsurfaced footpath, approximately 1.5km in length. Two steel footbridges each approximately 10m long, with concrete bollards at each end, would cross the drainage ditches on the proposed route to the north and a composite (steel and concrete) footbridge 8m in length would be provided on the proposed footpath to the south. Users would remain on FP15 to the east of the railway. The railway would be crossed via an existing underbridge to the north or, to the south, on the C23 Adelaide crossing.
- 7.12.6 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.

**The Case for the Applicant, Network Rail**

- 7.12.7 Footpath 15 provides a popular walking route along the River Great Ouse, with access from the west depending on crossing the railway. The railway can be crossed at Adelaide (not affected by this Order) or C24, Cross Keys. The proposal would include provision of a new footpath, to the west of the railway in the field margin, and a new crossing point of the railway to the north at an existing underbridge.
- 7.12.8 The proposals are not opposed by CCC, Ramblers or other users on the grounds of suitability/convenience. The proposals would provide a good alternative route. Those walking longer distances could choose to walk on either side of the railway, with two crossing points available. The alternative route is clearly necessary, since otherwise users would have to turn back on themselves to get to crossing points of the railway.
- 7.12.9 The sole objection is from the landowners, although part of their case is that the proposals would not be suitable and convenient for users. In light of the absence of any objection on these grounds from CCC or the Ramblers, this element of the argument should be given little weight. The real concern is the interference with the land, some of which is in a Stewardship scheme meaning that the owner is entitled to a grant for maintaining a field margin for wildlife.
- 7.12.10 As Mr Smith explained in evidence, if there were losses related to the Stewardship scheme, they would be the subject of compensation. It is not clear that the provision of a footpath would necessarily mean that the margins would not be able to fall within the scheme. Similarly, losses arising from temporary construction activities would also be compensated. NR would wish to time the works such that the losses were minimised, since that would be more cost effective for NR.
- 7.12.11 In relation to concerns about the adequacy of consultation NR complied with the legislative requirements of the 2006 Rules and took account of feedback from a variety of interested parties.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

- 7.12.12 FLUG supports the closure/alteration of 14 crossings<sup>256</sup> within the Order, including this crossing.

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<sup>256</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## **The Cases in Objection**

### **Jill Tuffnell (O5)**

- 7.12.13 The holding objection is to ensure that NR's proposed package, involving footpath creation and the maintenance of existing level crossing C23 Adelaide, is approved in its entirety. It is essential that access to the long-distance promoted route The Fen Rivers Way is maintained from Ely.
- 7.12.14 Ely is scheduled to expand significantly with new housing development north of the City, putting more pressure on the rights of way network. Access to the River Great Ouse is essential. FP49 and FP50 provide access from Ely to the River and the Fen Rivers Way and at least one of these crossings must be retained.
- 7.12.15 Closure of FP50 at C24 is acceptable as long as a new route is created alongside the railway line to create a new circular footpath easily accessible from Ely City. A new circular route for walkers which avoids a railway crossing will be essential. Crossing C23 must remain open.

### **Ramblers Association (O26)**

- 7.12.16 Having initially objected to the closure of this crossing the Ramblers withdrew their objection on 5 December 2017<sup>257</sup>.

### **Ely Group of Drainage Boards (O29)**

- 7.12.17 The Ely Group of IDBs is a consortium of ten Drainage Boards covering 47,000 hectares of the Fens, providing water level management via 29 Pumping Stations. Board consent is required for works on watercourses within the Boards District and for any works within nine metres of a Main Drain. The Pumping Stations have limited capacity and so unattenuated surface water discharge is not allowed, with new discharges requiring Board consent.
- 7.12.18 Part of the proposed diversion route would be adjacent to the Redmoor Main Drain. This would restrict annual maintenance operations and any future flood risk reduction channel widening schemes.

### **Chris Purllant, Brown & Co on behalf of Mr Anthony Leonard Lee, A L Lee Farming Company (O32)**

- 7.12.19 With 34 notices with differing plots, plans and rights required under the various notices and limited detail as to the exact proposals, the consultation process has been extremely limited. Onsite meetings should have been part of the process during the final stages.
- 7.12.20 The proposed visibility splays at Plot 40 are extensive being approximately 2.75 miles to the north and 0.62 miles to the south. Slow rail speeds would be expected at the curve point of the track and shortly after leaving the Ely station. The closure of the crossing is therefore excessive as it would divert pedestrians off the picturesque river bank onto a low-lying area of agricultural land for over 850m.

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<sup>257</sup> OBJ-26-INQ-06

The route of the proposed footpath is stated to be field margin, which is incorrect as this is arable agricultural land, entered into a mid-tier Environmental Stewardship Agreement for the past 12 years. This provides a diverse habitat which would be lost.

- 7.12.21 The route of FP15 along the adjacent river bank ensures pedestrians are kept away from the intensive cultivation, fertilisation and spraying operations, as well as the agrochemicals, associated with arable crop production. The continued use of FPs 50 and 15 with the existing pedestrian rail crossing is the most appropriate route to enable crop production and pedestrian use of land to remain segregated.
- 7.12.22 The Order proposes under Ely Civil Parish Plot 12 to acquire rights of access over a private farm track for around 980m. The notice and book of reference do not state whether such rights are proposed to be pedestrian or vehicular. There is an objection to any rights being created without the full details and clarification that such rights will be of a temporary nature only.
- 7.12.23 The Order proposes to create additional rights of access over arable fields shown as Ely Civil Parish Plots 9 & 10. These field margins are arable land which has been entered into environmental stewardship for the past 12 years and such rights are considered to be detrimental to then environmental benefits that have been created over this period. The Order fails to state whether such rights are pedestrian or vehicular and there is an objection to the lack of information.
- 7.12.24 NR state that a 9-day camera survey between the 18 & 26 June 2016 showed a total of 32 pedestrians using the crossing. The length of the survey was too short to adequately consider the level of use and the importance to the local community. The photograph of 11 April 2016 indicates a high level of usage given the die-back of the footpath vegetation between the stile and railway track.

### **Cambridge Local Access Forum (O52)**

- 7.12.25 The holding objection is to ensure that NR's proposed package, involving footpath creation and the maintenance of existing level crossing C23 Adelaide, is approved in its entirety. It is essential that access to the long-distance promoted route The Fen Rivers Way is maintained from Ely.
- 7.12.26 Ely is scheduled to expand significantly with new housing development north of the City, putting more pressure on the rights of way network. Access to the River Great Ouse is essential. FP49 and FP50 provide access from Ely to the River and the Fen Rivers Way and at least one of these crossings must be retained.
- 7.12.27 Closure of FP50 at C24 is acceptable as long as a new route is created alongside the railway line to create a new circular footpath easily accessible from Ely City. A new circular route for walkers which avoids a railway crossing will be essential. Crossing C23 must remain open.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.12.28 The proposed route would have an effect on agricultural land, requiring management to take account of a right of way in that location [7.12.21]. However, many PROW across the country co-exist with arable land use; there are already bridleways and footpaths on the farm<sup>258</sup> and so there is familiarity with the requirements.
- 7.12.29 Losses in relation to the Environmental Stewardship mid-tier scheme would be covered by compensation, as would temporary construction matters [7.12.9, 7.12.10, 7.12.20, 7.12.22 and 7.12.23].
- 7.12.30 There is also a potential effect on the IDB in relation to maintenance [7.12.18], which is discussed under SOM 4(c).
- 7.12.31 There would be some impact on the relevant parties. However, as a field-edge route the effect would be minimised and there are compensation provisions.

### **SOM 4(b) Impacts on other users**

- 7.12.32 The main identified use was public leisure use. The impacts would relate to matters under SOM 4(e).
- 7.12.33 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.12.12].

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.12.34 The IDB made a representation [7.12.17] setting out the importance of their work in controlling flood risk in the area. 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 [7.12.18]. NR wrote to the IDB on 29 September 2017 seeking to discuss the concerns, but no further information was submitted.
- 7.12.35 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. Changes to the width of the drain may require diversion of part of the right of way, depending on the scale of the change.

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<sup>258</sup> See map in OBJ-32, Proof of Evidence

- 7.12.36 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.

**SOM 4(d) Any other environmental impacts**

- 7.12.37 As noted above, the financial losses in relation to the Environmental Stewardship mid-tier scheme would be met [7.12.29]. What cannot be compensated directly are the potential environmental losses arising from the possible loss of diverse habitat in this area [7.12.20]. The discussion at the Inquiry related generally to 'the birds and the bees', with no specific protected species identified nor specific details of the Environmental Stewardship scheme aims on this land.
- 7.12.38 Natural England were consulted in relation to the screening decision. The finding was that, having regard to the characteristics and locations of the project and the type and characteristics of potential impacts, the project was unlikely to have a significant effect on the environment<sup>259</sup>. NR confirmed that no advice was sought from or offered by NE relating to Environmental Stewardship during Grip Stages 1-3<sup>260</sup>.
- 7.12.39 I have taken account of NE's standing advice for local planning authorities to assess the potential impacts of the development on wild birds. 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. Such wild birds as would be present in the area would be unlikely to be significantly disturbed by additional recreational use of the area.
- 7.12.40 The planning conditions agreed between NR and CCC would ensure that the works to install bridges over the drainage ditches [7.12.5] would not be carried out during the nesting season. The path itself would be an unsurfaced 2m wide footpath<sup>261</sup> and so would not introduce additional material, such as gravel, into the area.
- 7.12.41 Taking account of the available information I consider that the Secretary of State can be satisfied that there would be no significant environmental impact as a result of this proposal.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.12.42 The holding objections were concerned to ensure the continued provision of a circular route, access to the Fen Rivers Way and the retention of C23, Adelaide [7.12.13 – 7.12.15 and 7.12.25 – 7.12.27]. The RA were satisfied on the matter and withdrew their objection [7.12.16]. C23 was removed from the proposed Order at an early stage and the proposed routes achieve the links referred to [7.12.7 and 7.12.8].

<sup>259</sup> NR11

<sup>260</sup> NR-INQ-37

<sup>261</sup> NR12, Design Guide



- 7.12.43 It was suggested that the proposal was excessive, due to the visibility at the existing crossing [7.12.20] but this does not take account of the wider strategic case. The route falls into the mid-range of use, although local evidence indicates that it may have generally more use than that identified by this survey [7.12.24]. Given the relatively long distance from the nearest urban settlement, Ely [7.12.1] this demonstrates the importance of this area for recreational use.
- 7.12.44 The existing route provides a picturesque environment [7.12.20] 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. In addition, C23, to the south, would remain and so users could choose to walk a slightly longer route alongside the River Great Ouse, rather than divert to the proposed route on the other side of the railway, should they wish to.
- 7.12.45 I consider that the Secretary of State can be satisfied that the proposed route would be suitable and convenient.

#### **Other matters – statutory notices**

- 7.12.46 Mr Lee was listed as an owner and occupier in the Book of Reference in relation to the land affected by C24<sup>262</sup>. The notices were clearly received, and he engaged expert advice to assist him in the process [7.12.19]. NR were satisfied that the consultation complied with the legislative requirements [7.12.11], although I consider it helpful to ensure that onsite meetings are offered and carried out where requested. This apparently was not the case here, but NR assured me at the Inquiry that discussions with affected parties were ongoing.

#### **Conclusions**

- 7.12.47 There would be a small impact on the landowners, tenants, local businesses and the IDB. However, in balancing all the relevant matters I consider that the Secretary of State should include C24 within the Order.

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<sup>262</sup> NR09, Pages 24 – 41, Numerous plots in Ely Civil Parish

### **7.13 C25, Clayway**

#### **Description of the Crossing and Surrounding Area**

- 7.13.1 Littleport Footpath 11 ("FP11") crosses the Ely to King's Lynn railway line (BGK) on the eastern edge of the village of Littleport. 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 River Great Ouse adjacent to and within gardens backing onto the river. Footpath 15 ("FP15") runs to the south and the routes alongside the river are part of the promoted route, the Fen Rivers Way.
- 7.13.2 The route to the north is not available on the definitive line and walkers travel north-west over part of the proposed route to join Victoria Street. A level crossing exists on Victoria Street, which gives access over the river via Sandhill Bridge on Sandhill level crossing. Littleport Railway Station lies a little further to the north.
- 7.13.3 The general surrounding area appears as a fenland area of ditched and farmed land, with the City of Ely a little further to the south.
- 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. The railway in this location has two tracks carrying freight and passenger trains, with a line speed of 80mph. NR indicate that sighting at this crossing is poor. There are 2 whistle boards used between the hours of 06:00- 00:00. The ALCRM score is C5 with a 9-day camera census recording use by 119 pedestrians.

#### **Description of the Proposal**

- 7.13.5 It is proposed to close C25 to all users, extinguishing the existing public footpath rights. 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 (ALCRM score D2).
- 7.13.6 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. A 2m wide footpath would also be created on a private track to link the northern end of FP21 to the adopted highway on the east side of the crossing. FP11 to Clayway crossing on the west of the railway would be extinguished (approximately 100m in length) to prevent the creation of a cul-de-sac.
- 7.13.7 Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway. New signage would be provided.
- 7.13.8 The Stage 1 Road Safety Audit Update<sup>263</sup> identified a risk of pedestrian trips on Padnal Road and recommended that a crossing be provided.

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<sup>263</sup> NR16

## The Case for the Applicant, Network Rail

- 7.13.9 This level crossing has previously been considered for closure under s118A HA80 but that could not take account of the wider strategic case now before Secretary of State. The decision<sup>264</sup> was taken under a different statutory provision and the circumstances now are materially different in several respects.
- 7.13.10 The reasoning of the Inspector was based around the arrangements for pedestrians on Victoria Road, where they had been diverted to Sandhill level crossing, as they would have to cross Victoria Road twice to regain their original route and so "compete with road traffic". The present proposals provide for a new footway on the south side of Victoria Road such that users would not have to cross the road to continue south. As this issue was the central reason why the Inspector found that the proposals in 2004 were not acceptable, and it has been addressed, the case for closure is supported by that decision.
- 7.13.11 A further improvement from the 2004 application is that the Order would formalise the footpath between Victoria Road on the east of the railway and the river path. At present, this is not recorded as a right of way.
- 7.13.12 The 2004 application was supported by CCC and so it is surprising that they now object. The only changes have been positive ones in favour of closure as accepted in cross-examination by the CCC witness. The change of position may be explained by the fact that Mr Taylor<sup>265</sup> thought that the arrangements at Victoria Road were unchanged from the 2004 proposals when referred to in his review of the RSA.
- 7.13.13 This is a crossing where there are a number of safety issues to be considered. There is insufficient sighting and it is fitted with two "whistle boards", the removal of which would improve amenity for local residents. The crossing is close to an intolerable level of risk.
- 7.13.14 The June 2016 nine-day survey, which included two weekends, recorded 119 people using the level crossing with the busiest day being Tuesday 21 June 2016 when 24 adult and 2 child pedestrians were recorded. Of the 9 people that provided feedback during public consultation, 1 used it daily, 3 weekly, 3 monthly and 2 rarely. The crossing provides leisure access to the local footpath network for 8 people and for 1 user to access school. The crossing is used regularly by a moderate number of people, mainly to access the wider footpath network.
- 7.13.15 The diversion route is a short one. The current route provides a connection through a network of footpaths and local roads to the centre of Littleport. The proposed alternative continues to provide such a connection, either through the same network with some additional walking, or via Victoria Road itself. The additional walking on Padnal

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<sup>264</sup> CCC Core Documents, Bundle 1, 37

<sup>265</sup> CCC Road Safety Engineer

Road is on a pleasant suburban street, which is the environment which would be encountered by any user walking through Littleport.

- 7.13.16 The excellent work of Mr Clarke through his health walks would be unaffected by these proposals. It is inconceivable that they would cease due to a minor change to the footpath network. The route was obstructed when these walks started and so the need to divert via Sandhill level crossing has not deterred the walkers in the past.
- 7.13.17 The Ramblers called no evidence on this crossing.
- 7.13.18 The previous closure proposal, supported by CCC but rejected by the Inspector, has led to an improved proposal which addresses in full the basis for the earlier rejection. The strategic case for closure has, of course, strengthened since that time.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

7.13.19 FLUG supports the closure/alteration of 14 crossings<sup>266</sup> within the Order, including this crossing.

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<sup>266</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## The Cases in Objection

### Jill Tuffnell (O5)

7.13.20 This route provides a direct link between Footpath 10 ("FP10") and the promoted Fen Rivers Way. An attempt to close FP11 before was unsuccessful. As the crossing is close to Littleport Station trains are going relatively slowly and there have been no reported accidents or incidents in recent years. The railway line has light traffic and the sightlines are excellent. The footpath provides a more rural approach to the Fen Rivers Way and avoids walking along busy roads whilst the diversion involves walking on a busy road to the station crossing.

### Cambridgeshire County Council (O12)

- 7.13.21 CCC objects to this proposal because the alternative routes would use the public carriageway network. Connectivity with the local path network, which runs towards the centre of the village would be lost.
- 7.13.22 Closure would have a significant negative impact due to the loss of the link between the riverside footpath and Footpath 10 ("FP10"), north-west of Padnal Road. This would mean users would tend to use Victoria Road to the village centre, rather than Padnal Road to FP10. This would be less enjoyable due to the mixed vehicular/ pedestrian use compared to pedestrian use only.
- 7.13.23 The diversion would be three times as long as the existing route and two-thirds would be on-road, which could have a considerable effect on choice as to whether or not to continue walking the route, and consequently on public health. The CCC Senior Public Health Manager of Environment and Planning indicated that a proposed diversion, as a result of closing a crossing, might not be suitable for particular users, which may affect continued use of that route, or of walking at all. Habits can take 6-18 months to form and so if a closure disrupts a pattern of behaviour, such as walking, that may not re-establish, or it may take months to form a new habit i.e. finding another route.
- 7.13.24 As this crossing is part of a route used by a local Heartbeat Group, which is for people who have had a heart attack, this falls within the definition of a group of "People living with a long-term limiting illness" contained in the DIA scoping report. This crossing therefore warrants a full DIA, as the loss of this route may affect the health outcomes of this group if the new route proves unpopular. The local Heartbeat Group (O14) also object to the proposal.
- 7.13.25 Encouragement of healthy lifestyles is one of the six Priorities of the Cambridgeshire Health & Well-Being Strategy<sup>267</sup> and connects to Statement of Action 'A safer and health-enhancing activity' in CCC's ROWIP<sup>268</sup>.

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<sup>267</sup> CCC Core Document, Bundle 1, Tab 18

<sup>268</sup> CCC Core Document, Bundle 1, Tab 17, page 9

**David Clarke, Heartbeat Health Walks (O14)**

- 7.13.26 As the Walk Leader of the Heartbeat Health Walks ("HBHW") I am opposed to any proposed closure. The walks take place on four days each week for 51 weeks each year and are now in their 15th year of continuous operation.
- 7.13.27 The East Cambridgeshire HBHW were set up following the "Walking the way to Health Initiative", 2000. HBHW was set up in 2002 in conjunction with National Health Service staff and launched on 14 February 2003 with a walk at Littleport. Other walks were added in 2004 and 4,000 people have enrolled to walk. The walks last approximately one hour and vary between 2 and 3 miles in length. Each week, an average of 75 walkers attend for one walk or more, with around 250 "regular walkers".
- 7.13.28 The UK chief medical officers recommend adults spend at least 150 minutes per week in moderate physical activity. One way of achieving this would be to walk for 30 minutes on five days each week – for children, at least 60 minutes per day, preferably more. Only about one third of people in Britain achieve these recommended levels.
- 7.13.29 Inactivity is a key factor responsible for the dramatic growth of obesity; 61% of English adults and 30% of children are overweight or obese. All forms of walking are beneficial, but for the greatest benefit to heart, lungs and blood pressure, brisk is best. Regular walking would improve performance of the heart, lungs and circulation; lower blood pressure; and, reduce the risk of coronary heart disease and strokes. Inactive and unfit people have double the risk of dying from coronary heart disease.
- 7.13.30 Walking at any speed will help manage weight; reduce the risk of developing type 2 diabetes; reduce the risk of some cancers; improve flexibility and strength of joints, muscles and bones, and reduce the risk of osteoporosis (brittle bones); increase "good" cholesterol; boost the immune system; improve mood, reduce anxiety, aid sleep and improve self-image. Walking in moderation will help recovery from many medical conditions and positively influence the quality of life for almost everyone. Done in company it will help to stave off loneliness and depression and encourage a more positive outlook on life.
- 7.13.31 The proposed permanent closure of FP11 relates to a route that was impassable with safety since works were carried out on the relief drain on the SW side of the path in 2002/2003. Following a public inquiry in connection with a proposal by the railway company to close the railway crossing, it has been possible to walk a revised route on the south-west side of the open drain.
- 7.13.32 The Inspector at the 2004 public inquiry ruled that the crossing should be maintained as the path diversion route suggested would take pedestrians in close proximity to road traffic and was less safe than a properly ordered railway crossing. The Inspector made a number of suggested improvements to the rail crossing which were carried out subsequently by the rail company. In view of the findings of that public

inquiry, it is hoped that the path across the railway will be retained, since conditions remain unchanged at that point.

- 7.13.33 Mr Clarke indicates that he is not a spokesman for the 289 current participants of the HBHW scheme but, as a Walks Leader, is concerned with their health and safety in general. Where using roads is unavoidable, there is a danger of contact between vehicle and pedestrian. There is also a danger due to the inhalation of traffic exhaust fumes which pollute the air, with the presence of particulates and NOx. Recently, the Government department has become alarmed with the nature and extent of the pollution and damage to public health. Information about the dangers of high levels of atmospheric pollution has been known for about 50 years, but successive governments have taken little heed to influence their policies or decisions to prevent the situation becoming critical.
- 7.13.34 Health care is an increasing burden on public finances, and it is the duty of everyone to try and reduce that burden in whatever way is possible. Mr Clarke believes that the preservation of safer, cleaner walking places is very important and should be taken seriously.

#### **Ramblers Association (O26)**

- 7.13.35 The loss of this direct connecting route in an urban area removes the opportunity for local short circular walks and severs the connection with off-road routes. Although the proposals now (as distinct from 2004) provide a footway for pedestrians, walkers would still be forced to use the road environment (at the controlled, road level crossing), whereas the current route is away from the road.
- 7.13.36 The CCC evidence demonstrated that the current route was a local convenience leisure route for people making use of using short circular routes as well as being part of longer circular routes. The route takes people directly from the town to the river, via off road paths. It is used by people with heart conditions, as shown by the evidence of Mr Clarke (O14). The alternative cannot provide the same enjoyment as the current route, as it is the only access to the riverside path via off-road routes. The current route is an historic route. The Ramblers agree with CCC that it is easy to misunderstand the value that short routes such as this one has to local people.

#### **Cambridge Local Access Forum (O52)**

- 7.13.37 This crossing provides a direct link between FP10 and the CCC's promoted route, the Fen Rivers Way, FP21. There was an attempt to close this footpath in the past, which was refused by the Inspector. The grounds for refusal identified the pleasant off-road route.
- 7.13.38 So close to Littleport Railway Station, trains are going very slowly and there have been no reported accidents or incidents in recent years. The railway has light traffic and the sight lines are excellent.
- 7.13.39 FP11 provides a more rural approach to the Fen Rivers Way and avoids walking along a busy road. The proposed diversion would involve a walk alongside a busy road to the station crossing.



## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.13.40 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 [7.13.14]. Whilst this may be a more convenient route it is clearly not the only access for that home.
- 7.13.41 There is a drain situated on the land crossed by the right of way<sup>269</sup>, which is indicated to be tenanted by Padnal & Waterdean IDB. There has been no objection to the proposed alterations, and it does not seem that alterations to the rights of way would affect access for this party.
- 7.13.42 The proposed diversion would be likely to result in greater public use of FP 21, which passes through the gardens of properties sitting between Sandhill and the River Great Ouse. As there is already a public right of way in that location, which is part of a promoted route [7.13.37], I do not consider that the impact would be significant.
- 7.13.43 The section to be recorded at the northern end is already in use [7.13.11]. As a result, I do not consider that the creation of a new public right of way over this land would have a significant impact on the unknown landowner<sup>270</sup>.
- 7.13.44 If the level crossing was closed, then the associated infrastructure of whistle boards would be removed. I agree that this would improve the noise impact on local residents [7.13.13].

### **SOM 4(b) Impacts on other users**

- 7.13.45 The main identified use appears to be public leisure use [7.13.14]. The impacts would relate to matters under SOM 4(e).
- 7.13.46 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network. FLUG support this case [3.53 -3.56, 7.13.19].

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.13.47 There is no indication that any impacts would arise from this proposal.

### **SOM 4(d) Any other environmental impacts**

- 7.13.48 No matters were raised with regard to this matter. The proposed footway on the southern side of Victoria Street, providing access to the level crossing [7.13.10 & 7.13.12], would make use of a verge area.

<sup>269</sup> NR08, Sheet 13/NR09, page 50, plot number 33

<sup>270</sup> NR08, Sheet 13/NR09, page 49/50, plot number 30

Although removal of vegetation would have some effect there is no indication that there are species of particular environmental concern in this relatively small area.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.13.49 In relation to distance, for users travelling from the south on the Fen Rivers Way and wishing to reach the village centre, there would be a longer walk if choosing to return back to the off-road route offered by FP 10. This would also be the case for residents of Sandhills Road [7.13.20, 7.13.21 & 7.13.37]. I consider that CCC are likely to be correct in their assessment that users would tend to use Victoria Road to and from the village rather than return to FP10 [7.13.22].
- 7.13.50 However, in the same way, it is likely that people travelling from the east, or north along Footpath 13, would already be using Victoria Road for this purpose. For anyone actively choosing to use the crossing and follow FP10 from these directions the change in distance from using FP21 and FP11 to using Padnal Road would be minimal.
- 7.13.51 There was a lack of information on the use of short circular routes in this area [7.13.35]. The possibilities are limited by the lack of connections over either the river or the railway line, such that users would seem likely to walk greater distances, which would not be practically affected by the proposed changes. There would be likely to be greater impact on some users who may walk across to follow the river for a distance and then return on the same route, for example, dog walkers, although the evidence on this was limited [7.13.36].
- 7.13.52 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 [7.13.26, 7.13.33 & 7.13.39]. I consider 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. The routes would provide a similar experience to walking in Littleport generally [7.13.10 & 7.13.15].
- 7.13.53 Some reliance was placed on an earlier Inquiry and decision in relation to this crossing as showing that it should not be closed [7.13.32]. That decision was taken under different legislation<sup>271</sup> and NR have proposed changes under the Order to deal with matters raised in that decision [7.13.10 & 7.13.12].
- 7.13.54 In general, I consider that the proposed changes to the route, with the additional footway provision, would be suitable and convenient for users.

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<sup>271</sup> HA80, section 118A

**Public Sector Equality Duty**

- 7.13.55 Following the scoping exercise the decision was taken that no DIA was required for C25. However, given that the route was identified as part of the HBHW 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 [7.13.24].
- 7.13.56 The HBHW provides wide individual and community benefits [7.13.26 – 7.13.31 & 7.13.34] and contributes toward CCC policies [7.13.25]. It is noted that prior to the 2004 Inquiry the level crossing was not available, and use was apparently made of the proposed alternative at Sandhills. To that extent it appears that NR may be correct in their assessment that the HBHW would not cease as a result of the proposal [7.13.16]. However, CCC advise that changes might affect use [5.13 & 7.13.23], which could lead to less walking and so less health benefits, which are an important outcome of the HBHW [7.13.30].
- 7.13.57 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. 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). This likelihood that the PSED would not be met adds weight to my recommendation not to include this crossing in the Order.
- 7.13.58 However, I recognise that the Secretary of State may be satisfied that on the evidence available that the proposal would not mean that the HBHW group, who share the protected characteristic of long-term medical conditions, would be disproportionately affected. If so satisfied, then it is open to him to include the crossing in the Order.

**Conclusions**

- 7.13.59 Taking account of all above, and all other matters raised, I consider that the Secretary of State should not include this proposal within the Order. However, the Secretary of State could include this proposal within the Order having determined, on the available evidence, that there would be no disproportionate effect and so would not fail advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

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

### **Description of the Crossing and Surrounding Area**

- 7.14.1 These two crossings run parallel to each other running in a north-westerly direction from the public road Ten Mile Bank to cross the Ely to King's Lynn railway line. This is a single-track railway carrying passenger and freight trains, with a line speed of up to 90mph.
- 7.14.2 The furthest south, Poplar Drove, C26, is a public tarmacked road to the east of the level crossing, with an unsealed surface to the west. The crossing itself is a user worked vehicular crossing with a telephone. NR believed the level crossing to be a private (occupation) crossing for the use of landowners adjoining the road that crosses the railway only. The County Council, as the highway authority, considers the entire route, including the crossing, to be a public road.
- 7.14.3 The ALCRM score for the crossing is B3 and a 9-day camera census in June 2016 showed use by 17<sup>272</sup> vehicles and 5 pedestrians. An ALCRM census in March 2017 recorded 17 vehicles and 10 pedestrians used the crossing daily.
- 7.14.4 Willow Row Drove, or Willow Road, C27, is an unsurfaced Byway Open to All Traffic (BOAT30). The crossing is a user worked crossing, with an ALCRM score of A3. A 9-day camera census in January 2017 showed use by 21 vehicles and 10 pedestrians.
- 7.14.5 The village of Littleport lies a short distance to the south-west, with the City of Ely a little further south again. This is a fenland area of ditched and farmed land. Ten Mile Bank follows the north-western bank of the River Great Ouse, with the A10 lying on the south-eastern bank. Public footpaths follow the route of the river on either bank. There is a link using what appears to be an unofficial stile from Ten Mile Bank, near the east end of Willow Row Drove, to FP28, on the north-western river bank.

### **Description of the Proposals**

- 7.14.6 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. All public rights would be extinguished over C27, Willow Row, the level crossing infrastructure removed, and fencing provided to prevent trespass onto the railway. Public motorised vehicles would be diverted to the south to Littleport Bypass level crossing on the A10. Private vehicle rights would be granted to relevant landowners over C26, Poplar Drove, where the existing telephone would remain and a locked vehicular gate, bridleway gates with mounting blocks and a turning head for vehicles provided.
- 7.14.7 A new 3m wide unsurfaced bridleway, approximately 500m long, would be provided running on the east side of and adjacent to the railway, connecting Poplar Drove and Willow Row Drove. An 8m steel bridleway bridge would be provided across an existing drainage ditch.

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<sup>272</sup> 2 cars, 10 motorcycles, 5 bicycles, NR25,

- 7.14.8      Approximately 470m of Willow Row Drove would be downgraded to a bridleway. The surface of the section of BOAT31 on the west side of the railway, which runs between Willow Row Drove and Poplar Drove, would be improved with gravel/stone where appropriate.

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## The Case for the Applicant, Network Rail

- 7.14.9 The proposals relate to the closure of C27 Willow Row and the redesignation of C26 Poplar Drove. Users of C27 would cross the railway at C26 and a new bridleway connection would join the crossings to the east of the railway. To the west, a section of BOAT would be improved to allow for connections to BOAT 30.
- 7.14.10 The concerns of CCC relate mostly to use by trail riders and was a concern raised late in the day. CCC's interest in the trail riders (and their interest in the Order) appears to have arisen after submission of the Order and not in the previous 2 years of discussions between NR and CCC. The concern raised is that trail riders would not be able to use the proposed bridleway connection and so would not be able to enjoy BOAT 30 to the east of the railway. CCC contend that a BOAT is required where the bridleway is proposed.
- 7.14.11 CCC's concerns contrast to the landowners' who argue that even a bridleway is an excessive burden on their land. They say that users can continue their journey on Ten Mile Bank to connect to Poplar Drove rather than coming up BOAT 30 and continuing beside the railway.
- 7.14.12 NR believes that the right balance has been struck; equestrians and pedestrians would have a short, off road diversion. This would interfere with agricultural land but would sit at the edge of the fields closest to the railway and the owners would receive compensation. Motorised users could reasonably be expected to continue to Poplar Drove – perhaps 30 seconds of motorbiking away from Willow Row Drove – using the local road network. The extent of the connected BOAT network would be marginally reduced, but as explained in the context of C11, these routes form parts of extensive on and off-road biking trips. None of the trail riders live in the immediate vicinity.
- 7.14.13 A concern was raised by Mr Murfitt in respect of his farming enterprise. He argues that diversion via C26 Poplar Drove would undermine his agricultural operations, particularly in periods of intensive movements. It was unclear why a particular field should be the subject of such intensive activity. However, the reality is – as he accepted – that even in the worst case the journey would be extended by a matter of a few minutes. Repeated journeys would mean that this adds up, but it would not be such a great inconvenience as to be a good reason for resisting closure of the crossing. There is no fundamental impracticality in the proposed arrangements for him and his farming activity.
- 7.14.14 The alternative route is not significantly longer than the current route. NR is satisfied that its proposals would be suitable and convenient for existing users. The new PROW must be completed to the reasonable satisfaction of the local highway authority.
- 7.14.15 In relation to access required to maintain a water level controller (supplying crop irrigation), NR will continue to engage with the objector.
- 7.14.16 In relation to concerns about the adequacy of consultation NR has complied with the legislative requirements of the 2006 Rules and took account of feedback from a variety of interested parties.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

7.14.17 FLUG supports the closure/alteration of 14 crossings<sup>273</sup> within the Order, including this crossing.

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<sup>273</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## The Cases in Objection

### Jill Tuffnell (O5)

- 7.14.18 The closure of C27 affects a BOAT which leads north-west from the footpath alongside Ten Mile Bank on the River Great Ouse at Denver Farm<sup>274</sup> for over 3 kilometres to Hale Drove<sup>275</sup>. It would mean diversion around three sides of a square and an increased distance of around 1.5 kilometres, increasing walking time by at least 20 – 30 minutes, which is very inconvenient.
- 7.14.19 The diversion to another at grade level crossing, C26, provides a reduction in maintenance costs for NR but no improvement in safety for walkers. As no incidents/accidents have been reported in recent years Ms Tuffnell objects to the closure of C27 where the railway is lightly used, and the sightlines are good. All level crossings should be maintained to good safety standards.

### Cambridgeshire County Council (O12)

- 7.14.20 CCC's position is that C27, Willow Row Drove crossing, should not be closed. If the alternative route was designated as a BOAT, subject to a TRO to restrict mechanically propelled vehicles to motorcycles, this would be an acceptable compromise. This would address the lack of facility for the existing use by Trail Riders.
- 7.14.21 The proposal would result in BOAT30 becoming a cul-de-sac route for an established class of user, i.e., Trail Riders. This leads to a loss of 20% of the local byway network – 14% becoming a no through route and 6% total loss. This is by no means an insignificant loss.
- 7.14.22 NR emphasised that motorcycle users include routes such as Littleport BOAT No 30 as part of longer journeys of 70 to 100 miles and that such journeys include riding on the ordinary carriageway network. This may be true, due to the necessity of having to travel between the types of routes from which they derive their enjoyment, but NR have provided no data to clarify the percentage split between on-road and off-road routes that are used in these journeys. Without this data it is not possible to ascertain the impact that the crossing closure will have on this class of existing user. It is submitted that NR have failed to undertake sufficient assessments to provide an objective commentary on whether or not this existing class of user is adequately catered for by the proposals.

### Ramblers Association (O26)

- 7.14.23 The Ramblers maintains its objection to the closure of the Willow Row Drove crossing, C27 and requests that it be withdrawn from the proposed Order. The proposed alternative route is circuitous, with NR in cross-examination accepting that it was longer and a significant diversion on foot, estimating that it would take between 15 and 20 minutes longer. The Ramblers estimate that it would take 20 to 30

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<sup>274</sup> Situated at the south-eastern end of Willow Row Drove/Road

<sup>275</sup> West of the railway



minutes longer. It was also accepted that for some journeys it would feel that a walker was going out of their way.

- 7.14.24 If the Willow Row Drove crossing is closed and all users diverted onto the Poplar Road crossing, this would include all of the agricultural traffic displaced from Willow Row Drove, including large agricultural vehicles. This road level crossing is unsegregated. Walkers would have to use the proposed new bridleway which runs alongside the railway.
- 7.14.25 The alternative route is inconvenient and unsuitable for walkers.

### **Ely Group of Drainage Boards (O29)**

- 7.14.26 The Ely Group of IDBs is a consortium of ten Drainage Boards covering 47,000 hectares of the Fens, providing water level management via 29 Pumping Stations. IDB consent is required for works on watercourses within the Boards District and for any works within nine metres of a Main Drain. The Pumping Stations have limited capacity and so unattenuated surface water discharge is not allowed, with new discharges requiring Board consent.
- 7.14.27 C27, Willow Row is used to access a water level controller, vital to raise water levels for crop irrigation. The IDB would not be able to access this structure via the proposed diversion. In addition, C26, Poplar Drove, is used for access to flood risk assets and the IDB would require the access right to remain.

### **Anthony Bebbington, Environment Agency (O31)**

- 7.14.28 The Environment Agency is an affected landowner in relation to C26, Poplar Drove. The EA is in principle supportive of the closure, although detail is lacking. Further information is required on the extent, type and duration of work to assess the impact on statutory and operational duties, assets and tenants.

### **Chris Purllant, Brown & Co on behalf of Mr Anthony Leonard Lee, A L Lee Farming Company (O32)**

- 7.14.29 In recent years the unmanned crossings have not been used by traffic permitted to use a bridleway, due to the nature of operating such a crossing. The proposal to create a bridleway across land adjacent to the railway line would create a circular route between the crossings, which would be excessive. Creation of a BOAT with a width restriction of 1.525m would encourage equestrian activity adjacent to a high-speed railway line which would reduce the proposed increase in rail safety.
- 7.14.30 NR say that in many locations bridleways run adjacent and parallel to railway lines without issue or an increase in rail risk. However, in this location consideration must be given to the open fen landscape and the lack of sound or visual buffering by screening vegetation.
- 7.14.31 Closure of the crossings without the creation of a bridleway would be the most suitable option to improve rail safety.

**Matthew Murfitt (O36)**

- 7.14.32 Willow Row Farm is a 400-acre block of land lying to the north of Willow Row Drove, split in two by the railway line. It feels like the farm has not been listened to about the importance of the crossing to the business with the access needed to farm the land.
- 7.14.33 Cameras were placed on the crossing at known quiet periods to achieve low access numbers for NR. As the nature of our farm is seasonal, the farm may not use the crossing on a daily basis, but in busy periods, such as harvest, need to cross the railway line continuously, for example 50 times/day to move 1,750 tonnes of sugar beet back to the farmyard.
- 7.14.34 Using C27, Willow Row, means that the farming business can be self-contained with all of our agricultural vehicles. Using C27 takes 3 minutes from the farm to get to the land to the north-west but the proposed route is 9 minutes, so three times as long. Poplar Drove is rutted, and this would also cause a problem for agricultural use as produce may drop off the trailers. A loaded tractor and trailer of 26 tonnes on this route would damage machinery and road surfaces.
- 7.14.35 If the proposal goes ahead, the farm vehicles would be forced onto the public highway, which would inconvenience not only the farm, but also the scenic cycle route for the River Great Ouse and other road users; Ten Mile Bank is not a quiet country road. Use of the public highway raises safety concerns for the farm business.
- 7.14.36 Horse riders could use Ten Mile Bank and Poplar Drove rather than requiring the proposed new bridleway. Provision of the bridleway is betterment. There is an equestrian centre at the end of Willow Row Drove and the bridleway would encourage use.
- 7.14.37 There would be considerable cost to the farm and there may be a need to hire extra help in labour and machinery, which could lead to an environmental impact. If granted private access over the crossing, the farm business could remain self-contained, away from the public and other road users and would not be a burden on anyone.
- 7.14.38 The evidence of Mr Prest said that there was unsuitable visibility on Poplar Drove but that the visibility was suitable on Willow Row Drove. It does not seem right to go to the expense of moving all users onto a crossing not up to industry standards.

**National Farmers Union (O43)**

- 7.14.39 The NFU supports Mr Murfitt (O36) in regard to his evidence as the farmer affected by the proposals from Willow Row Farm. The farm is approximately 400 acres, split by the railway line, with C27 Willow Row crossing used on a daily basis to run the farm operations. At harvest time the crossing is essential for the sugar beet harvest, with up to 50 trailers a day carting sugar beet back to the farm run every 10 minutes. The economic impact to the farm business, including the extra time required, in having to use C26 Poplar Drove has not been

considered. Private vehicle rights to use Willow Row Crossing should be granted.

- 7.14.40 If Poplar Drove crossing was to be the only available crossing, then the proposed route running northwest of the railway line would need to be up graded and not just BOAT 31.
- 7.14.41 The proposed bridleway to the east of the railway is not required and does not need to be created over agricultural land. Bridleway users can ride along Ten Mile Bank and then along Poplar Drove and use Poplar Drove Crossing to connect to the west side of the railway line. The proposed bridleway would create a circular route; a TWAO does not give powers for betterment in regard to rights of way.
- 7.14.42 With regard to both crossings it is imperative that the width is maintained for agricultural vehicles. A decrease of the width to 1.5 m would mean it would not be possible to use it with agricultural vehicles.

### **Cambridge Local Access Forum (O52)**

- 7.14.43 The closure of C27 affects a BOAT which leads north-west from the footpath alongside Ten Mile Bank on the River Great Ouse at Denver Farm for over 3 kilometres to Hale Drove. It would mean diversion around three sides of a square and an increased distance of around 1.5 kilometres, increasing walking time by at least 20 – 30 minutes, which is very inconvenient.
- 7.14.44 The diversion to another at grade level crossing, C26, provides a reduction in maintenance costs for NR but no improvement in safety for walkers. As no incidents/accidents have been reported in recent years the CLAF object to the closure of C27 where the railway is lightly used, and the sightlines are good. All level crossings should be maintained to good safety standards.

### **Jane Murfitt (O54)**

- 7.14.45 The crossing is a great asset, which has been part of the fen network for hundreds of years. The creation of a bridleway across the field would devalue the land and allow trespassers to roam with their animals, which could contaminate the field.
- 7.14.46 Ms Murfitt indicates that she only learned of the proposed creation indirectly.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Relevant Matters

7.14.47 Although NR initially believed that C26 was a private crossing I consider that the CCC, as the highway authority, provided clear evidence<sup>276</sup> that the status of the route was a public vehicular highway throughout [7.14.2]. I have dealt with the matter on this basis.

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.14.48 The 9 day census indicates a similar level of use at each of the crossings [7.14.3 and 7.14.4], with both falling in the mid-range in terms of the crossings affected by this Order. However, it will be noted that the readings for C26 were taken in June and those for C27 in January. Whilst this is likely to be due to circumstance, rather than deliberate [7.14.33], the level of use recorded outside what would be likely to be a busier period, in terms of both agricultural activity and leisure use, suggests that the level of use of C27 may have been underestimated.

7.14.49 The query of NR regarding the use of a particular field [7.14.13] fails to recognise that the crossing provides access to approximately half of the area of Willow Row Farm [7.14.32 and 7.14.39]. The proposed closure of the crossing, without provision of private vehicular rights, would result in increased time and cost to the farm. The calculated 6 minutes extra per journey over 50 journeys would mean at least an extra 5 hours would be required to haul the same tonnage [7.14.34]. This is likely to lead to additional costs to the farm business [7.14.37].

7.14.50 Poplar Drove is a tarmac route with some rutting of the surface evident on my site visit. However, given that Willow Row is a generally unmade route, the loss of produce or damage to machinery would not appear likely to vary greatly [7.14.40]. Nonetheless, the additional agricultural use would lead to greater wear and tear on the road at Ten Mile Bank, as well as potential conflict with other road users<sup>277</sup>, which at present is limited to users of the BOAT [7.14.34 and 7.14.35].

7.14.51 Both routes are used by Ely Drainage Board for maintenance and irrigation purposes [7.14.26 and 7.14.27]. Although they raised concerns about access if C27 were closed there does not seem to be any reason why they could not access all areas from C26 [7.14.15].

<sup>276</sup> OBJ-12, Proofs of Evidence, W6, pages 23 – 24

<sup>277</sup> There was no traffic survey data for Ten Mile Bank, NR-INQ-34

- 7.14.52 The EA indicated that they are an affected landowner [7.14.28]. They are not identified as such in relation to C26<sup>278</sup> and so presumably their land is not directly alongside the crossing. It is noted that, subject to further discussion, there is no objection in principle. Any relevant works matters can and should be dealt with at the detailed design stage to ensure no impact on duties, assets or tenants.
- 7.14.53 In relation to the proposed bridleway to the east of the railway line there would be an effect on the available land, however, the route would be on field margins and land 'loss' could be dealt with by compensation provisions [7.14.12]. It is unclear why unauthorised access [7.14.45] would be any more likely than from the existing BOAT (Willow Row) and highway (Poplar Drove) which already run alongside these fields.
- 7.14.54 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' [7.14.10 and 7.14.20]. The proposed width of 3m would not be unreasonable for a BOAT, particularly if subject to a TRO, but if it was the case that on detailed design a wider route was required that matter could be dealt with through compensation. A vehicular route would be likely to be even less welcome by the directly affected landowners [7.14.11], although it could potentially provide a shorter off-road link to and from Willow Row Farm if C27 were to be closed.
- 7.14.55 It was clarified that whilst the public access would be at the limited width, the private users would have a route available at a suitable width for agricultural vehicles [7.14.42].
- 7.14.56 Taking all the above matters into account I consider that there would be negative impacts in relation to land owners, tenants, local businesses and the public. In particular there would be interference with access to land and property for Willow Row Farm, directly impacting on their ability to carry on their business. There would also be an impact on the public, and other businesses, due to increased agricultural traffic on Ten Mile Bank during busy periods.

#### **SOM 4(b) Impacts on other users**

- 7.14.57 In relation to public leisure use the impacts relate to matters under SOM 4(e).
- 7.14.58 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.14.17].

#### **SOM 4(c) Impacts on flood risk and drainage**

- 7.14.59 As set out above [7.14.51] there appears to be no reason why the proposed changes would prevent maintenance and so no reason for any impact on flood risk or drainage.

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<sup>278</sup> NR09, pages 42 – 47

**SOM 4(d) Any other environmental impacts**

7.14.60 No specific issues were raised in relation to this matter.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.14.61 It has been suggested that the proposed bridleway link route is unnecessary and would effectively be betterment in providing a circular route [7.14.29, 7.14.36 and 7.14.41]. It is assumed that the reference to no bridleway traffic using the crossings [7.14.29] relates to equestrians. Although no horse-riders were recorded in the 9-day census, here or at any other crossing within the Order, cyclists were recorded on C26, Poplar Drove and walkers on both crossings. These use classes are both entitled to use bridleways and whilst use of C26 would continue, the closure of C27 would mean those travelling from the north-east would have to make a more significant detour without the provision of the proposed off-road link.
- 7.14.62 In terms of walkers wishing to follow Willow Row Drove there would be quite a significant detour [7.14.14, 7.14.18, 7.14.23, 7.14.25 and 7.14.43]. 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 9-day census [7.14.3 and 7.14.4], although it will noted that as many walkers used C26 in the March 2018 ALCRM census. It is possible that the use was in connection with access to land, rather than leisure, however, all five who responded at the first round of public consultation indicated leisure use. The crossings can be used as part of circular routes, either together or separately, from Littleport, as well as in conjunction with the footpath on the River Great Ouse.
- 7.14.63 With regard to horse riders it was suggested that the proposed linking route would be dangerous and so should not be provided [7.14.29 and 7.14.30]. 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. I do not consider that a case has been made to remove a link between these crossings if one of the crossings was closed.
- 7.14.64 In relation to trail riders I believe there is less effect on their use than on other off-road users, simply because they can travel greater distances in a shorter time in order to reach other off-road routes [7.14.12]. However, there would be a not insignificant loss of off-road routes for these users in this particular area [7.14.21]. Given that six motorcycles were recorded using the crossing on Sunday 26 June, and only one of the private user responses indicated infrequent motorcycle use<sup>279</sup>, this suggests public use as part of a recreational group. This demonstrates a desire for use in this area and I do not consider it relevant whether they lived in the immediate vicinity or not [7.14.12 and 7.14.22].

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<sup>279</sup> NR32-1

- 7.14.65 Concerns were raised regarding the movement of all users onto the same crossing point [7.14.24]. This may have some negative effect. However, I consider that 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<sup>280</sup>. C26 is one of only two of the crossings affected by the Order where sighting is not compliant from every direction<sup>281</sup>. Moving all users to this crossing would not improve safety for anyone, including railway users [7.14.19, 7.14.38 and 7.14.43].
- 7.14.66 As set out under SOM 4(a) the proposal would not be convenient in relation to the agricultural use for Willow Row Farm.
- 7.14.67 Taking all these matters into account I do not consider that the Secretary of State can be satisfied that the proposal would be suitable and convenient for users, whether public or private.

### **Other matters – statutory notices**

- 7.14.68 Mrs Murfitt was listed as an owner and occupier in the Book of Reference in relation to the land affected by the proposal<sup>282</sup>. However, she indicates that she was not made aware of the proposed creation by way of an appropriate notice [7.14.456]. NR are content with regard to consultation [7.14.156] but there were problems around the service of notices in relation to this Order, which led to the removal of some crossings from the Order.
- 7.14.69 As compulsory purchase would be involved in this process the Secretary of State has to be satisfied that the statutory procedures have been followed correctly. Mrs Murfitt made an objection and had the opportunity to give evidence to the Inquiry. The NFU were present at the Inquiry and spoke on this matter. The Secretary of State may, therefore, be satisfied that any potential prejudice has been overcome. However, it may be that removing this crossing from the Order for later consideration, as occurred with C03, C08, C09 and C13, would be appropriate to ensure compliance.

### **Conclusions**

- 7.14.70 Taking account of all the relevant matters, I consider that the Secretary of State should not include the proposals involving C26 and C27 in the Order. The effect on existing users, public and private, in relation to C27 in particular would be significant. There also appear to be issues with the service of notice in relation to C27.
- 7.14.71 Should the Secretary of State be so minded then the inclusion of C26, as proposed but without the changes required to deal with matters arising from C27, may be reasonable. This would reduce the public use of a crossing that does not meet NRs minimum sighting distance and so could improve safety for users.

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<sup>280</sup> NR31-1, paragraphs 26.8 and 27.8

<sup>281</sup> NR31-1, the other crossing is C30, Westley Road. C13, Middle Drove, has been removed from the order due to issues with service of notice

<sup>282</sup> NR09, Pages 43 – 45

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

### **Description of the Crossing and Surrounding Area**

- 7.15.1 Black Horse Drove is a public road in Littleport Parish. It runs from Ten Mile Bank to the south-east and crosses the Ely to King's Lynn railway line (BGK), which is 1 track at this point with a line speed of up to 90 mph carrying passenger and freight trains. The public road user worked level crossing has miniature stop lights and telephones, with vehicular access gates and wicket pedestrian gates in the railway boundary fence.
- 7.15.2 To the north-west of the railway Black Horse Drove continues for approximately 240m, beyond which it becomes a private road. Properties to the north-west of the railway line use the level crossing for access.
- 7.15.3 The village of Littleport is situated to the south, along Ten Mile Bank, with the smaller villages of Southey and Hilgay to the north-east. The general surrounding land is ditched and farmed fenland with individual farms, properties and minor roads. Black Horse Drove itself passes through agricultural fields, alongside a number of farm and residential buildings.

### **Description of the Proposal**

- 7.15.4 The ALCRM score for this crossing is B4. The 9-day camera census recorded 145 vehicles and 105 pedestrians using the crossing. Between 2005 and 2014 there were 10 incidents of deliberate misuse and one near miss. On 19 October 2005 there was a fatality when a train struck a tractor on the level crossing.
- 7.15.5 NR deem the sighting at the level crossing insufficient for motorists. User worked crossings are no longer seen by NR to be an appropriate crossing type for public roads. It is proposed to extinguish all public rights over the crossing, making a private user worked crossing for existing users, who would be granted private rights. A turning head is already available to the south-east of the railway.
- 7.15.6 The road to the north-west of the railway would cease to be a highway by operation of the Order.



**The Case for the Applicant, Network Rail**

- 7.15.7 The benefits of the proposal are that the level crossing will not be freely open to the public, only to authorised users and their invitees. If the crossing remained as a public road significant resources would be needed to upgrade the crossing to an automated barrier system.
- 7.15.8 CCC is now satisfied with the proposals in respect of this crossing. It was agreed that if the occupants of the properties served by the crossing could continue to use it then the identified problems, such as access to facilities, would not materialise.
- 7.15.9 NR has taken account of the issues raised by the landowners and negotiated with them accordingly. In terms of access for visitors, emergency services etc. NR had originally indicated that the crossing gates would be secured by a combination padlock. In light of landowner concerns NR has agreed that the gate would not be locked. Appropriate signage would be put in place to indicate that the crossing was not a public right of way, solely an access to properties to the north-west.
- 7.15.10 In terms of the status and maintenance of the existing highway to the north-west NR entered into discussions with CCC and the SYPA (REP 4), which owns land to the west of the railway. This has led to a bespoke provision in the draft Order which would address (a) the continued right to use the existing road for properties to the north-west of the railway and (b) the provision of compensation for those affected by this closure. The Article puts these issues beyond doubt, drawing on precedent from other TWAOs and other legislation. The fact that this provision has been negotiated between NR's solicitors and those for SYPA, and that SYPA is now satisfied, is a matter which should be given considerable weight.
- 7.15.11 SYPA withdrew their objection in writing on 22 February 2018. Following further discussions, Mr Alderton (REP 5) and Mr Price (REP 6) withdrew their objections at the Inquiry.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

- 7.15.12 FLUG supports the closure/alteration of 14 crossings<sup>283</sup> within the Order, including this crossing. Media coverage of the accident at Black Horse Drove was included in the appendix information. This resulted in the death of a tractor driver.

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<sup>283</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## **The Cases in Objection**

### **Cambridgeshire County Council (O12)**

- 7.15.13 Being satisfied that with the additional clause to be added to the Order, the objection to this proposal was withdrawn on 21 December 2017<sup>284</sup>.
- 7.15.14 CCC disagreed with the findings of the DIA that "An analysis of local amenities indicates that there are no local amenities or places of particular importance to equalities groups in close proximity to the crossing." They indicate that there is an operating bus stop one side of the crossing for the route 129 bus, with the nearest houses are the other side of the railway. CCC believe that an assessment should have been made of any impact the closure would have on the bus route and accessibility to the bus stop<sup>285</sup>.

### **Ely Group of Drainage Boards (O29)**

- 7.15.15 The Ely Group of IDBs is a consortium of ten Drainage Boards covering 47,000 hectares of the Fens, providing water level management via 29 Pumping Stations. Board consent is required for works on watercourses within the Boards District and for any works within nine metres of a Main Drain. The Pumping Stations have limited capacity and so unattenuated surface water discharge is not allowed, with new discharges requiring Board consent.
- 7.15.16 This crossing is used for access to flood risk assets and the Board would require the access right to remain.

### **Other objectors**

- 7.15.17 Affected landowners and occupiers made objections in response to concerns raised by CCC in the letter of 27 November 2017. These objections were subsequently withdrawn following discussion with NR and CCC.

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<sup>284</sup> OBJ-12-INQ-06

<sup>285</sup> Although CCC withdrew their objection I have taken account of the comments by the CCC Senior Public Health Manager of Environment and Planning in relation to the PSED

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.15.18 The wider Ordnance Survey mapping<sup>286</sup> shows the lack of public rights to the west of the crossing [7.15.2], the routes in this area being private roads providing access to and from agricultural, residential and holiday property. This route had the highest level of vehicular use and the second highest level of use overall in the census date [7.15.4]<sup>287</sup>.
- 7.15.19 Following discussion on matters such as access and maintenance<sup>288</sup> an amendment to the Order was proposed [7.15.8 – 7.15.11, 7.15.13 and 7.15.17]. This would deal with the concerns raised and it will be noted that the objections were subsequently withdrawn.
- 7.15.20 I deal with the access for IDB in relation to SOM 4(c) below.
- 7.15.21 Given that all those requiring access to the west of the railway would be granted it<sup>289</sup> there appears to be no impact on land owners, tenants, local businesses, utility providers and statutory undertakers. The public right of access would be removed. However, as there is no recorded public right of way or public open space beyond the end of the road to the west of the railway it does not appear that there would be reason for general public access.

### **SOM 4(b) Impacts on other users**

- 7.15.22 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.15.12].

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.15.23 The IDB made a representation [7.15.15] referring to their work in controlling flood risk in the area and indicating that they require access to flood risk assets [7.15.16].
- 7.15.24 I consider 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. As such there would be no alteration to flood risk or drainage.

### **SOM 4(d) Any other environmental impacts**

- 7.15.25 No issues were raised in relation to this matter.

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<sup>286</sup> NR32-2, Appendix 9

<sup>287</sup> The greatest overall use was recorded on C12

<sup>288</sup> NR-INQ-11

<sup>289</sup> NR-INQ-19

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

7.15.26 As referred to in relation to SOM 4(a) above there would appear to be no need for a diversionary route for those who require access to property and their lawful invitees. Given the lack of public access west of the railway there was no need to identify a diversionary route for the public.

**Public Sector Equality Duty**

7.15.27 In relation to C28, the DIA scoping rating was Amber, from which it was advised that the site could be closed as soon as infrastructure interventions had taken place. As an Amber site NR completed their DIA pro forma based on available evidence<sup>290</sup>.

7.15.28 CCC advised that the local amenities had not been properly taken into account [7.15.14]. As set out above, there is very little likelihood of general public use of this crossing [7.15.18], as it is a private crossing. The private users, with or without protected characteristics, would remain able to use the route [7.15.21] and so access to the amenities, and equality of opportunity, would be unaffected.

7.15.29 I consider that the Secretary of State can be satisfied that there is no likelihood that that PSED would not be met in this case.

**Conclusions**

7.15.30 With those requiring access being granted it, and little likelihood of existing public use, the question arises as to how the proposal would benefit NR; the crossing would not be removed, and it does not appear that use would be reduced from present levels. NR say that the crossing would not be freely available to the public [7.15.7]. There may be occasions when people might seek to explore the area or be unaware of the lack of continued legal access, but this is likely to be very low level.

7.15.31 Looking at all relevant matters there would appear to be very little advantage to NR in closing this crossing. The Secretary of State may consider, given the level of continued use by owners, occupiers and their lawful invitees, that the crossing should not be closed but should instead be upgraded to an automated barrier system [7.15.7].

7.15.32 However, on balance, the potential very small level of reduction in use, would be just sufficient to meet the strategic aims of the Order. As such I recommend that C28 should be included, with the changes as set out in the filled Order.

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<sup>290</sup> NR-INQ-18, Diversity Impact Assessment – Scoping Report, RPT018 Revision D, August 2016, section 2.3

## **7.16 C29, Cassells Crossing**

### **Description of the Crossing and Surrounding Area**

- 7.16.1 Brinkley Footpath 1 ("FP1") crosses the Cambridge to Ipswich railway line (CCH) east of the hamlet of Six Mile Bottom, just north of St George's Church. FP1 runs from Brinkley Road, a UCR carrying traffic via a level crossing with automatic half barriers to the junction with the A1304, London Road, which links to the A11 trunk road a short distance to the south-west.
- 7.16.2 FP1 runs through a narrow strip of woodland between Brinkley Road and Cassells level crossing, C29. On the opposite side of Brinkley Road, Wilbraham FP11 runs to a minor road to the south. The long-distance route, the Icknield Way Trail, is a little distance to the southeast.
- 7.16.3 To the north of the railway FP1 runs to the north-east, parallel to the railway line to join other rights of way. FP1 links to Brinkley Footpath 10 ("FP10") to the south-west, which runs parallel to the railway line and then north-west to join Brinkley Road at Six Mile Bottom via an informal carpark area.
- 7.16.4 C29 is a passive footpath level crossing with gates in the railway boundary fence and a SLL sign. The railway is one track, carrying passenger trains, and has a line speed of up to 60 mph.
- 7.16.5 The ALCRM score for this crossing is D8. The nine-day camera census was undertaken between 18 and 26 June 2016 and recorded a total of two pedestrians using the crossing but some footage was lost due to equipment failure.
- 7.16.6 The City of Cambridge lies to the east and the immediate surrounding area appears to comprise small villages or hamlets, individual farms and horse studs. There are a number of main roads giving access to, from and around the city, with minor roads providing local links.

### **Description of the Proposal**

- 7.16.7 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. Crossing infrastructure would be removed and fencing installed to prevent trespass on the railway.
- 7.16.8 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 Network Rail land adjacent to Brinkley Road, north of the level crossing. The existing fencing would be re-sited to the south-west of the proposed route. Brinkley Road level crossing, which has an ALCRM score of E4 and white line pedestrian access indications on both sides, would provide the railway crossing point.
- 7.16.9 A new section of 2m wide unsurfaced footpath, approximately 20m in length, would be created to connect the existing length of FP10 north-west of the railway.

**The Case for the Applicant, Network Rail**

- 7.16.10 There are no private rights of way.
- 7.16.11 Two people provided feedback during the first round of public consultation, indicating that they rarely used the crossing, which provided leisure use. The data suggests that the crossing is used infrequently by a small number of people to access the wider rights of way network.
- 7.16.12 Following a scoping study, a DIA was not considered necessary due to the restricted accessibility of the existing route. The length of the diversion is approximately 180m, however, the origin and destination points would affect the overall length for users.
- 7.16.13 The Stage 1 RSA of the proposal did not identify safety issues. The provision of a footway/surfaced highway verge to the south of the railway was beneficial. Nine-day Automatic Traffic Count data showed an average 2-way daily traffic flow of 1,281 vehicles and 85th percentile speed of vehicles of 43.3mph where the posted speed limit is 40mph. Based on the traffic data and RSA outcome the use of Brinkley Road is considered safe and suitable.
- 7.16.14 The objections relate to loss of amenity and adequacy of the alternative route. The alternative is not significantly longer than the current route. NR considers it a suitable and convenient replacement for existing users.

## The Cases in Objection

### Jill Tuffnell (O5)

- 7.16.15 Ms Tuffnell gave evidence to the Inquiry as part of the Ramblers' case. The objection to this crossing was withdrawn by the Ramblers. Ms Tuffnell gave no evidence in relation to this crossing at the Inquiry but did not formally withdraw her objection.
- 7.16.16 In relation to the level crossing closure plans in Cambridgeshire, where level crossings are maintained, all possible steps should be taken to maximise safety for users. This would include the provision of lights linked to signals; gates to replace stiles; close boarding across rails; and, the provision of time-table information next to the crossing. Diverted or new paths should be adopted as rights of way by CCC, with agreements relating to ongoing maintenance.
- 7.16.17 New footpaths should not include stiles or other impediments for elderly or disabled walkers.
- 7.16.18 This footpath links directly with FP11, crossing the Brinkley Road. The proposed diversion to the railway line at the gated Brinkley Road level crossing is accepted as safer, as long as adequate off-road access is provided. The proposed 2m wide asphalt planings footpath adjacent to Brinkley Road within NR land is welcomed. However, it is not clear whether the asphalt path reaches all the way to Brinkley FP1. Any verge not included in the proposed asphalt path should be made suitable for walking and separated from the roadway.

### Cambridgeshire County Council (O12)

- 7.16.19 CCC initially made a holding objection to the closure of this crossing. Being satisfied with the resolution met through negotiation, CCC withdrew their objection on 19 December 2017<sup>291</sup>.

### Ramblers Association (O26)

- 7.16.20 Having initially objected to the closure of this crossing the Ramblers withdrew their objection on 12 December 2017<sup>292</sup>.

### Cambridge Local Access Forum (O52)

- 7.16.21 The footpath links directly with Little Wilbraham FP11, crossing the Brinkley Road. The proposed diversion to cross the railway line at the Brinkley Road level crossing is safer as long as adequate off-road access is made for walkers. The provision of a new 2m wide asphalt planings footpath adjacent to Brinkley Road is welcomed. However, it is not clear whether the path reaches all the way to Brinkley FP1. Any verge not included in the proposed asphalt path must be made suitable for walking and separated from the roadway.

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<sup>291</sup> OBJ-12-INQ-05

<sup>292</sup> OBJ-26-INQ-07



## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

7.16.22 There are no private rights affected by this proposal [7.16.10] and no indication of any effect on users other than in relation to the public right of way.

7.16.23 The creation of a new section of public right of way on the south-eastern side of the informal carpark area<sup>293</sup> does not appear likely to impact on any land owners, tenants, local businesses, utility providers or statutory undertakers.

### **SOM 4(b) Impacts on other users**

7.16.24 The only identified users are public leisure walkers. The impacts would relate to matters under SOM 4(e), and so I shall deal with them in section below.

7.16.25 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network.

### **SOM 4(c) Impacts on flood risk and drainage**

7.16.26 There is no evidence to suggest any impact on flood risk or drainage in this area. The use of asphalt planings [7.16.8] should provide a permeable surface, which would reduce any potential localised risk.

### **SOM 4(d) Any other environmental impacts**

7.16.27 No matters were raised with regard to this matter. An existing road-side verge is proposed for use and I consider that the potential impact of a small number of users diverted from the crossing [7.16.11] should have no impact on the verge ecosystem. The re-siting of the fencing [7.16.8] would lead to the removal of some vegetation growing alongside part of the fence<sup>294</sup>, however, there is no indication that it is of particular environmental value.

### **SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

7.16.28 The additional overall length is 180m [7.16.12]. I consider that the Secretary of State can be satisfied that such an increased distance in the context of route used primarily for leisure purposes is not unreasonable.

<sup>293</sup> Land No. 04, Parish of Little Wilbraham, Sheet 33, Core Document NR08

<sup>294</sup> Land No. 07, Parish of Little Wilbraham, Sheet 33, Core Document NR08

- 7.16.29 The Stage 1 RSA has identified no matters of concern [7.16.13] and the requested off-road access [7.16.18 and 7.16.21] would be provided. The direct link to FP1 from the northern side of the Brinkley Road level crossing reduces the distance that users would be walking alongside the road<sup>295</sup>. There is no intention for stiles or gates on this route and so accessibility would be improved from the current situation where there are gates [7.16.4 and 7.16.17] on the crossing itself.
- 7.16.30 In relation to maintenance CCC raised concerns in the initial stages of the process but, during the Inquiry, this was one of a number of matters dealt with by agreement. CCC are the highway authority, and so responsible for matters relating to road verges amongst other things. I consider that the withdrawal of their holding objection demonstrates that such matters have been satisfactorily agreed [7.16.16].
- 7.16.31 Taking account of all the matters raised, I consider that the Secretary of State can find that this proposed alternative route 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 this area. The proposed alternative route to be provided would be a convenient and suitable replacement for existing users.

### **Public Sector Equality Duty**

- 7.16.32 No DIA was carried out following scoping of this proposal. I agree with NR that the existing route has limited accessibility [7.16.12]. I consider that the Secretary of State can be satisfied that there is no likelihood that that PSED would not be met. The proposal could advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it due to the improvement in terms of lack of obstructions on the proposed route.

### **Conclusions**

- 7.16.33 Taking account of all above, and all other matters raised, I consider that the Secretary of State should include this proposal within the Order.

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<sup>295</sup> Section P118 – P119, Sheet 33, Core Document NR08

## **7.17 C30, Westley Road<sup>296</sup>**

### **Description of the Crossing and Surrounding Area**

- 7.17.1 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 (CCH). The eastern end of the road links, across another road, to the small village of Westley Waterless. Some distance to the north-west, again crossing other roads, including the A1304, A11, A14 and A1303, is the larger village of Bottisham.
- 7.17.2 The hamlet Six Mile Bottom lies to the south-west of the crossing. This can be accessed via an existing public footpath, Brinkley Footpath 10 ("FP10"), which runs generally south-west/north-east, parallel and to the north-west of the railway line.
- 7.17.3 The level crossing is a user worked crossing with miniature stop lights on a public road and a telephone (UWCM). The crossing also has wicket gates in the railway boundary fence (FPWM). The UWCM crossing has an ALCRM score of C6 and the FPWM crossing has an ALCRM score of D7.
- 7.17.4 The railway comprises 1 track, carrying passenger and freight trains, with a line speed of up to 60mph. An ALCRM census in 2013 recorded 2 vehicles used the UWCM crossing, and 9 pedestrians used the FPWM crossing. A 9-day camera census in April 2013 recorded 39 pedestrians, with the busiest day being Sunday 28 April 2013 when 11 pedestrians and 2 cyclists were recorded. A total of 35 vehicles were recorded using the crossing, with a maximum of 9 vehicles on a single day.
- 7.17.5 Twelve people provided feedback during the first round of public consultation, with 3 using the crossing daily, 3 weekly, 1 fortnightly, 3 monthly and 1 rarely. Ten people used it for leisure purposes and 2 for commuting.
- 7.17.6 The City of Cambridge lies to the east. The surrounding area appears to comprise small villages or hamlets, individual farms and horse stud farms, these being particularly prevalent to the north-east, on the outskirts of Newmarket. A number of main roads provide access to, from and around the city and town, with minor local linking roads.

### **Description of the Proposal**

- 7.17.7 It is proposed to downgrade the crossing to the status of a BOAT. 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.

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<sup>296</sup> NR have referred to this as Westley Road, but it is recorded on the Ordnance Survey mapping as Westley Bottom Road

- 7.17.8 Non-authorised vehicles would use existing highway and Brinkley Road level crossing, to the south. This has automatic half barriers and an ALCRM score of E4.

**The Case for the Applicant, Network Rail**

- 7.17.9 No objections were received. However, the proposal is affected by CCC's general concern about "down-grading" UCRs to byways<sup>297</sup>.

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<sup>297</sup> Dealt with in Other Matters, section 8

## **Inspector's Conclusions**

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.17.10 With access available from both south-east and north-west there would be no prevention of access to property, although two people used the route for commuting [7.17.5] and depending on the origin and destination this may result in longer journeys. There has been no objection to the proposal to close the crossing [7.17.9] and so it is reasonable to assume that users were content with these changes.
- 7.17.11 No objection has been raised from the potentially affected farms, businesses and properties situated on Westley Bottom Road. This suggests that the proposed provision of private rights over the crossing [7.17.7] would not impact on their properties or businesses.
- 7.17.12 On balance the overall effect of the proposed changes for the above-mentioned parties should be minimal.

### **SOM 4(b) Impacts on other users**

- 7.17.13 There appear to be a mix of uses with similar levels of vehicular and pedestrian use [7.17.4]. With an indication of leisure use there may be impacts relating to matters under SOM 4(e).
- 7.17.14 The strategic case sets out the way in which rail users would benefit from the proposed alterations, removing level crossings from the rail network. In this case the level crossing would not be closed entirely but the use by vehicles would be restricted [7.17.7]. This would remove an element of risk from the crossing.
- 7.17.15 The overall effect of the proposed changes should be minimal, with the Brinkley Road Crossing providing an alternative vehicular access [7.17.8].

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.17.16 No evidence was submitted to suggest any impact on flood risk or drainage in this area.

### **SOM 4(d) Any other environmental impacts**

- 7.17.17 No matters were raised with regard to this and the proposed route is already in use. As a result, it would be unlikely that any new impact would arise.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.17.18 For public vehicular users there may be a greater distance to travel, via Brinkley Road Crossing [7.17.8], however, the provision of appropriate signs at either end of the route would limit the likelihood of wasted journeys, with a need to use the turning circles. The diversion is not of such significant distance that it would be likely to be unsuitable to users.
- 7.17.19 Non-motorised use would be well catered for by the underpass and there would be improvements with the provision of mounting blocks [7.17.7].

**Public Sector Equality Duty**

- 7.17.20 No DIA was carried out following scoping of this proposal. I consider that the impact of additional travel for motorised users would be unlikely to be felt disproportionately. There would be no change for NMUs.
- 7.17.21 I consider that the Secretary of State can be satisfied 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). The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

**Conclusions**

- 7.17.22 Taking account of all above, and all other matters raised, I consider that the Secretary of State should include C30 within the Order.

## **7.18 C31, Littleport Station**

### **Description of the Crossing and Surrounding Area**

- 7.18.1 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 (eastern – Cambridge bound) platform at Littleport station, on the Ely to King’s Lynn railway line (BGK). The access road runs northwards to the station from Station Road, a public highway approximately 80m south of the crossing.
- 7.18.2 The Lynn Road underbridge provides vehicular access immediately to the south of the station, as does the Lynn Road level crossing, just a short distance further south.
- 7.18.3 The crossing is an ungated footpath crossing with miniature stop lights, accessed from the platform end ramps. The railway at this crossing comprises 2 tracks, carrying passenger and freight trains, and has a line speed of up to 60mph.
- 7.18.4 The village of Littleport lies a short distance to the north-east of the City of Ely within a fenland area of ditched and farmed land. Littleport Station itself is situated to the north-east of the main part of the village, close to the A1101 and A10 junction, which provides a bypass around Littleport.

### **Description of the Proposal**

- 7.18.5 It is proposed to close C31 to all users, extinguishing the existing private access rights. To provide alternative access to the up (eastern) platform, NR seeks powers to close the Lynn Road underbridge to vehicular traffic to enable its use as part of a route between platforms. Public rights for NMUs would remain. Bollards would restrict use of the existing carriageway beneath the underbridge to NMUs only via a new raised footway (approximately 30m in length).
- 7.18.6 A new access to the up platform would be created on NR land to the east of the railway. Crossing infrastructure would be removed and platform-end fencing installed to prevent trespass onto the railway.

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- 7.18.7 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. The King's Lynn Service Enhancement Scheme would deal with the closure of the barrow crossing within Littleport Station.
- 7.18.8 31 people provided feedback during the first round of public consultation, with 11 indicating daily use, 6 had used weekly, 9 monthly and 5 rarely. The crossing is used for commuting for 11 people, leisure purposes for 8 people, access their own property for 3 and access local amenities for 2, with 7 people indicating 'Other' use.
- 7.18.9 The western platform is fully accessible, with stepped and ramped options for users. Level crossing furniture is present across the railway, and the lack of access gates mitigates accessibility restrictions; however, this may result in reduced safety at the site.
- 7.18.10 The DIA<sup>298</sup> indicates that the access ramp from the station car park to the down (western) platform has a gradient of 1:20 and would not be altered. The access to the eastern platform involves gradients of 1:12 and 1:11 between the level crossings and the platforms. The proposed new ramp on the eastern side of the railway would have a gradient of 1:20.
- 7.18.11 An Equality and Diversity Overview Report was prepared, and this more detailed consideration of equalities issues recommended that a full DIA was undertaken. The DIA concluded that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route was an appropriate solution.
- 7.18.12 DfT states that underpasses should be as wide as possible to give sufficient room for disabled users, and ensure a sense of security, with new or enhanced underpass infrastructure aspiring to a width of at least 4.8 metres and a headroom of 3 metres, or as close to these parameters as reasonably practicable / deliverable. Within the underpass, handrails set at 1,000mm above the walking surface should be provided on both sides. There should be a clear view from one end to the other and a good level of lighting. CCTV cameras should be in place to enhance security, with notices of its operation to deter vandals and provide a measure of comfort to pedestrians.
- 7.18.13 The existing underpass is a significant structure with dimensions of 4.5m wide x 2.5m high. These are only slightly less than the DfT recommendations and so, given that it is currently shared with vehicles, the proposals represent a significant improvement in safety.
- 7.18.14 Handrails and lighting could be provided as part of the detailed design. This would require further discussion with the highway authority.

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<sup>298</sup> NR-INQ-18, Diversity Impact Assessment, C31 Littleport Station, 20/11/2017



The provision of CCTV is not deemed necessary as the underpass is currently open to the public without CCTV.

- 7.18.15 Improvements to disabled parking and ticket machines at the station would be considered as part of the Network Rail King's Lynn Service Enhancement scheme. The DIA would be reviewed at the detailed design and/or implementation stage to ensure that changes to the design would not worsen access and would improve where appropriate.
- 7.18.16 The ALCRM score for C31 is C6. Between 2008 and 2016, 425 incidents of misuse and near misses were reported at C31. In the 12 months to June 2017 there were 109 incidents of misuse and near misses.
- 7.18.17 The Lynn Road underbridge is regularly subject to bridge strikes, which is a safety issue and, as a minimum, causes delays to trains while the structure is inspected. Strikes have occurred on 18 August 2009, 21 June 2010, 9 March 2011, 22 November 2011, 27 February 2014, 26 August 2015 and 23 February 2016.
- 7.18.18 Two Automatic Traffic Count (ATC) surveys were undertaken at the underpass adjacent to Station Road and near the level crossing on Station Road. It was concluded that the underpass is used by a relatively low number of vehicles and its closure is expected to have minimal impact on the operation of the rest of the highway network.
- 7.18.19 Following consideration of use of the existing route across the Level Crossing and the assessment of the proposed alternative in terms of impacts on the environment, users and other impacted parties, NR are satisfied that the proposed route is suitable and convenient.

## **The Cases in Support**

### **Alan Mayles (S1)**

- 7.18.20 Mr Mayles wants to see 8-car trains to King's Lynn as soon as possible. For that reason, he specifically supports the closure of the Barrow (foot) crossing C31 at Littleport Station and a new access to the southbound platform as part of the work needed to achieve this.
- 7.18.21 For 8-car trains to run to King's Lynn both platforms at Waterbeach and the northbound platform at Littleport would need to be extended to support the stopping of an 8-car train. An 8-car train stopping at those platforms currently would block the adjacent road level crossing. The road level crossings at Littleport Station and Waterbeach Station would of necessity remain in place.

### **Andy Tyler obo Fen Line Users Group (S2)**

- 7.18.22 FLUG supports the closure/alteration of 14 crossings<sup>299</sup> within the Order, including this crossing. There are 229,628 passengers at this station per year (2015/16 ORR estimate) and the crossing poses a risk due to the bends at both ends of the station, which can hide fast non-stopping trains running at up to 75 mph.
- 7.18.23 The proposal would also help with the platform lengthening works under consideration as part of NR's Cambridge – King's Lynn 8-car scheme, designed to tackle peak-time overcrowding. The Statement of Consultation (Document NR5) sets out that the proposals would complement this scheme.
- 7.18.24 NR need to deal with flooding in the underpass. Although the Statement of Consultation (Document NR5) states that flooding is not a frequent event, and there is an alternative route available via Station Road, the effect of extensive puddling can be long-lasting. In wet periods the puddling extends to the entire bridge footprint. It is therefore requested that a condition be placed on the Order to have this matter satisfactorily dealt with.

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<sup>299</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## **The Cases in Objection**

### **Cambridgeshire County Council (O12)**

- 7.18.25 CCC initially made a holding objection to the closure of this crossing due to concerns about the potential transport impacts. Being satisfied that subsequent information took account of the background growth of Littleport it was accepted that the proposals would not constitute a 'severe' impact on the local highway network.
- 7.18.26 In relation to other concerns CCC accepted NR's view that they were outside the reasonable scope of the application and intends to pursue the improvement works through other opportunities.
- 7.18.27 As a result, CCC withdrew its holding objection to this proposal<sup>300</sup>.

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<sup>300</sup> OBJ-12-INQ-07

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.18.28 Although in the public consultation there was some indication of use of the crossing to access property [7.18.8] no private rights are apparently recorded, other than those belonging to NR [7.18.7]. 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.
- 7.18.29 The public use of the crossing is predominantly for access to and from the railway station and platforms as part of journeys for both commuting and leisure. Clearly there is a need for access to both sides of the railway line for access and egress from the trains at the station.
- 7.18.30 As the landowner NR indicate the ability to develop their business by way of the issues considered under Strategic Matters in section 3 of this Report. In relation to this crossing it has been suggested that the proposed King's Lynn Service Enhancement Scheme would be assisted by the proposed closure [7.18.7] enabling platform extension. FLUG suggests this would be of assistance to the public in tackling peak-time overcrowding [7.18.23].

### **SOM 4(b) Impacts on other users**

- 7.18.31 The use appears to be in connection with travel and impacts would relate to matters under SOM 4(e). For train users, whether using this station or not, it appears that there may be consequent improvements to peak-time use [7.18.20, 7.18.21, and 7.18.23]. Although these would only arise if the platform lengthening works were implemented, NR relied in their strategic case on this Order assisting in the delivery of other works on these railway lines.
- 7.18.32 However, taking account that this is a station serving a relatively large village in this Fenland area there are potential impacts on a number of users wishing to easily access the station platforms.

### **SOM 4(c) Impacts on flood risk and drainage**

- 7.18.33 Although in support of the proposal overall, particularly in relation to the King's Lynn Enhancement Scheme, FLUG raised concerns regarding the flooding/puddling in the underpass [7.18.24]. Although NR indicate that flooding is infrequent in their consultation response<sup>301</sup> the suggestion that an alternative exists on Station Road ignores the intention to provide a non-motorised alternative access.

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<sup>301</sup> Core Document NR05

7.18.34 On balance, however, I consider that the Secretary of State can be satisfied that the provision of a raised walkway should provide protection from such events.

**SOM 4(d) Any other environmental impacts**

7.18.35 No matters were raised with regard to this matter. The proposed use of the embankment for the access ramp to the eastern platform would lead to the removal of vegetation in this area. There is no indication that there are species of environmental concern in this area.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

7.18.36 In relation to distance, for users travelling on foot, bicycle or mobility assisted from the properties on the eastern side of the railway and wishing to reach the eastern platform there would be less distance to travel as access directly to the eastern platform would be provided.

7.18.37 For those travelling from the main residential area to the west it does not appear that there would be 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, particularly in the context of length of the journey already taken to reach the station.

7.18.38 The main change would arise for those driving to the station carpark, which is situated to the north-west of the station itself. To access the eastern platform these users would walk back along the station/car park access road, via the underpass and then along the proposed new link. The DIA<sup>302</sup> 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.

7.18.39 In relation to safety I consider that the Secretary of State can be satisfied that there would be a number of improvements. Firstly the public would not be crossing the railway line so removing that risk [7.18.16 and 7.18.22], subject to the potential unauthorised access referred to above, which would be managed by NR in any event.

7.18.40 In addition, the public are already using the underpass, at present sharing that space with motorised users, albeit at a low level [7.18.18]. I agree that the provision of a non-motorised space would be an improvement for these users [7.18.13], with the vehicles displaced only onto Station Road to the south. The possible delays which may arise for vehicular users waiting for trains at Station Road level crossing would not be expected to affect the wider network.

7.18.41 Account should also be taken of the removal of the possibility for bridge strikes, which causes potential injury and or/distress for those involved in the incident, including NMUs who may be using the route at

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<sup>302</sup> Inquiry Document NR-INQ-18, C31 – Littleport Station

the time. In addition, these incidents lead to cost and delay for the rail network [7.18.17] in checking the bridge structure is safe for continued overhead rail use.

7.18.42 The DIA indicates that planning permission has been granted for expansion of the railway station carpark, including provision of a 1.2m wide footway in the underpass<sup>303</sup>. CCC had mentioned this in their holding objection, suggesting that there was no need for a TRO to prevent motorised vehicular use. However, in the end no objection to the closure of the underpass to vehicles was made by CCC [7.18.27], the highway authority, or East Cambridgeshire District Council, the planning authority.

7.18.43 Although maintenance costs would remain on this section of public highway those costs would be reduced as they would relate to a non-motorised rather than a motorised route.

### **Public Sector Equality Duty**

7.18.44 The main matter of concern is the potential change in accessibility of the eastern platform. At present the western platform is accessible [7.18.9] and, from there, the eastern platform can be relatively easily reached by all persons via the crossing boards over the line.

7.18.45 The proposed route would be relatively level on the carpark access road and via the underpass. As the underpass would be closed to motorised traffic users would be able to use the entire width and not be relegated simply to the raised walkway, providing an additional 2.5 m width. The proposed 2m wide footway would be available to segregate walkers from cyclists and would also provide a raised route to assist with access at times of flooding/puddling [7.18.24]. Works would be required to establish a raised walkway providing anything close to the DfT preferred headroom of 3m, given that the existing headroom is only 2.5m; this seems unlikely to occur. Although the underpass does not meet the standards outlined by DfT [7.18.10, 7.18.12 and 7.18.13] in general I consider that the proposed use of the underpass provides an acceptable alternative route.

7.18.46 The route to the eastern platform was indicated in the DIA Scoping Report to potentially involve gradients of around 13%. This differs from the information taken into account in the full DIA, which referred to a gradient of 1:20 (5%). As the DIA sets out in the table on page 14<sup>304</sup>, a gradient of more than 8% would not be acceptable in accessibility standards and the alternative route would need to be adapted to meet the DfT standards.

7.18.47 The DIA 'Informed decision-making' indicates that "Due to the relatively short diversion route and proposed diversion route improvements, closure and redirection to the underpass and new ramp is considered an appropriate solution."

<sup>303</sup> Application reference 16/01729/F3M, approved 3 March 2017

<sup>304</sup> NR-INQ-18, C31 – Littleport Station Barrow Crossing

- 7.18.48 The DIA suggests that for users travelling to the eastern platform on foot from Littleport, distance would be reduced as access would be closer to the village. The main residential area lies to the south-west of the station and so this would not necessarily follow. However, the ramp access may be closer to Station Road itself, such that any change in overall distance for users on foot would be minimal, providing that they did not need to first access the western platform to buy a train ticket.
- 7.18.49 Taking all the above matters into account, I consider that the proposal on its own may not advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; it would increase distance and add an extra ramped access to the route to and from the eastern station. This would particularly be the case if the facilities for parking and purchasing tickets were only available on the western side of the station.
- 7.18.50 This proposal relates to access to the train station, and so ongoing access to public transport. As a result, I have had due regard, in particular, to the need to remove or minimise disadvantages and to take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it, encouraging those persons to participate in public life. I consider that the proposal may not achieve this aim as there would be increased barriers to access to the eastern station in terms of distance and ramped access, which would particularly impact upon some of those with protected characteristics.
- 7.18.51 However, the DIA referred to the provision of ticket machines on the eastern platform, to avoid the need for users to access both platforms when only needing to use one, along with the provision of disabled parking spaces. I consider that this would help in amelioration of the negative impacts. This would only be looked at in relation to the King's Lynn Service Enhancement Project [7.18.15] and there was no indication of the timescale or likelihood of delivery of that scheme or of this element of that scheme. Nonetheless, taking account of the likelihood of this development, and the need to NR to continue to take account of the PSED in developing their own proposals, I consider that such measures are likely to occur.
- 7.18.52 Taking all the relevant factors into account I consider that there is a possibility that the PSED would not be met if the amendments to ticketing and parking were not implemented. However, in development of the station as a whole such matters would need to be addressed.

## **Conclusions**

- 7.18.53 Taking account of the above, and all other matters raised, I consider that the Secretary of State should include C31 within the Order.

## **7.19 C35, Ballast Pit**

### **Description of the Crossing and Surrounding Area**

- 7.19.1 This is a private vehicular access track to lakes situated to the east and west of the Liverpool Street to Ely railway line (BGK) railway line. In this area the railway line runs generally north – south, approximately parallel to, and west of, Long Drove. The track runs generally north-westerly across agricultural land for approximately 120m from Long Drove, in the Parish of Waterbeach.
- 7.19.2 This is a passive private user worked crossing with SLL signs. The railway comprises 2 tracks, carrying passenger and freight trains, and has a line speed of up to 75mph. The ALCRM score for this level crossing is A6. Questionnaires completed by the authorized users in December 2016 indicated 10 pedestrian traverses per month, twice monthly with a tractor and ten times yearly with other vehicles.
- 7.19.3 The large village of Waterbeach lies to the south-west of the crossing, with the City of Cambridge a little further to the south-west of that. The A10 runs approximately parallel to the railway line to the west of Waterbeach whilst the River Cam lies to the east of Long Drove. The promoted long-distance footpath the Fen Rivers Way runs along the bank of the River Cam.
- 7.19.4 The general surrounding area is fenland, with ditched and farmed land, a mix of large and small villages and varied commercial enterprises. Waterbeach Station is situated to the south of the crossing.
- 7.19.5 It should be noted that the land affected by this proposal is part of an area identified for development of a new settlement, Waterbeach New Settlement. It was subject to the draft South Cambridgeshire District Local Plan which, at the time of the Inquiry, was in Examination in Public jointly with the Cambridge City Local Plan<sup>305</sup>.

### **Description of the Proposal**

- 7.19.6 The Order would confer powers to close the crossing to all users and extinguish the existing private rights. 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. Bannolds level crossing has automatic half barriers and an ALCRM score of D5.
- 7.19.7 The existing track west of Ballast Pit, approximately 290m in length, would become a private road with a culvert over the watercourse, to connect into Waterbeach Byway Open to All Traffic 14 ("BOAT14").
- 7.19.8 Crossing infrastructure would be removed and fencing installed to prevent trespass onto the railway.

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<sup>305</sup> The Local Plan was adopted on 27 September 2018 and confirmed the development of a new settlement to the west of the railway line in the vicinity of C35 Ballast Pit crossing.



**The Case for the Applicant, Network Rail**

- 7.19.9 This private user worked crossing serves a small fishing lake. The sole issue at Inquiry was the impact of the new track proposed to connect that lake to BOAT 14 to allow vehicular access to the lake from the west.
- 7.19.10 Mr Clewlow's clients wish to develop land to the west of the railway as part of the Waterbeach new town. They do not yet have any detailed plans, but their broad intention is that BOAT 14 should cease to be a vehicular route. If so, that is an issue with which they would need to grapple regardless of this proposal, which simply connects to that existing route.
- 7.19.11 The Order would not interfere with their proposals. The closure of this crossing may be needed to facilitate the new town (and the new station) in any event. As accepted in evidence, "no doubt alternatives to the private means of access proposed could be negotiated". The cost of purchasing freehold land would be greater than the cost of the rights and so this could not be justified under compulsory purchase. There is no reason to delay the closure of C35.
- 7.19.12 There was concern about an increase in liability on local highway network and diminution of enjoyment for NMUs. There were also concerns about impacts on farming business.
- 7.19.13 NR considers that its proposals are a suitable and convenient replacement for existing users and will continue to engage with relevant stakeholders in relation to the impacts of its proposals at this location.

## **The Cases in Support**

### **Andy Tyler obo Fen Line Users Group (S2)**

7.19.14 FLUG supports the closure/alteration of 14 crossings<sup>306</sup> within the Order, including this crossing.

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<sup>306</sup> One of these, C03, West River Bridge was removed from the Order proposal prior to the Inquiry opening

## The Cases in Objection

### Cambridgeshire County Council (O12)

7.19.15 Being satisfied that the proposals would not pose a maintenance issue for CCC, the objection to this proposal was withdrawn on 2 November 2017.

### Simon Clewlow, Clewlow Consulting Limited *on behalf of Mr J S Martin, Mr J J Martin, Mr B H Sanders, Mr A K Shipp, Aquila Investments Limited and RLW Estates Limited* (O33)

7.19.16 RLW Estates Limited is a development company set up to promote and implement the construction of Waterbeach New Settlement. There are two possible outcomes such that the land could continue to be used for agriculture or be incorporated as part of the new settlement. A single solution would cater for either scenario.

7.19.17 The proposed alternative access would introduce a new vehicular route across fields currently largely inaccessible other than via the existing crossing. There appears not to have been any consideration of the effect of the alternative access on agricultural security, i.e., the risk that the alternative would facilitate access to parts of farmholdings for which the railway and the present level crossings are an effective means of securing the isolation of fields thereby preventing anti-social activities such as fly-tipping or crop damage.

7.19.18 Although the proposed vehicular route would only have a private right of access, to serve the fishing lakes alongside the western side of the railway, this would provide an open 290m long track from Bannold Drove, BOAT14, in an isolated location over which there is no natural surveillance to the adjoining fields. The existence of the track may mean that others seek to make use of the track for other purposes.

7.19.19 To improve security for the fields to the west of the railway and east of BOAT14, there are two potential solutions: the inclusion of fencing and a gate at the junction between the proposed track and BOAT14. The gate could be restricted to keyholders, namely the parties on behalf of whom this representation is made together with the owner of the fishing lakes. However, as the fishing lakes could be used by a variety of people there is the prospect of such security being compromised and so this does not offer sufficient safeguards.

7.19.20 It would be better to avoid the need for a gate, the need for the private rights of access to the fishing lakes and construction of the associated track. This could be achieved by NR purchasing the fishing lake to the west of the line, subject to appropriate compensation, and selling them to RLW Estates Limited on the same or similar commercial terms. RLW Estates Limited would waive its rights to an alternative means of access and private rights such that NR would avoid the cost of forming the alternative access.

- 7.19.21 The plans<sup>307</sup> show indicative walking and cycling routes, including the intention to remove vehicular rights from BOAT14. The proposed location for the railway station is indicated to the south of C35.
- 7.19.22 Avoiding the creation of a private means of access would mean that the planning of the Waterbeach New Settlement would not be compromised. This would benefit NR, as the applicant; enable the security of the fields to the west of the railway to be maintained; and, in due course, good planning of the new settlement to proceed.

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<sup>307</sup> OBJ-33-INQ-01

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 7.19.23 The desire to find a single solution taking account of proposed changes is entirely understandable [7.19.16]. The suggestion to avoid the need for the private rights [7.19.20] does not take sufficient account of the requirements of compulsory purchase requirements, which are dealt with in the relevant section.
- 7.19.24 In relation to concerns regarding agricultural, and general, security to the west of the railway line [7.19.17 – 7.19.19] I consider it unlikely that there would be increased likelihood of access in comparison to the current situation. With permission having been granted to access the proposed route I found it relatively easy to do so from both Long Drove to the east and BOAT14 to the west, albeit on foot and from differing access points across the ditch between BOAT14 and the fields. NR made it clear that gates and keys or padlocks could be provided if identified as a requirement during the detailed design process.
- 7.19.25 Those with access rights to the fishing lakes would be accommodated by the proposal. The land owners/occupiers to the west of the railway, over which the proposed access would be provided would lose some productive land. However, as a field-edge route the effect would be minimised and there are compensation provisions.
- 7.19.26 In relation to the proposed development it is noted that the intention would be to stop up vehicular rights over BOAT14 [7.19.21]. The private right leads to the existing public vehicular route, which would have to be dealt with through the development process in any case [7.19.10]. Whilst the additional private right would itself need to be agreed with the relevant parties in relation to the development alternatives could be negotiated [7.19.11]. It does not appear that this would compromise the development [7.19.22].

### **SOM 4(b) Impacts on other users**

- 7.19.27 No other users were identified on this private crossing. In relation to the potential increase in vehicular use on BOAT14 [7.19.12] it will be noted that the level of such use is very low [7.19.2]. I do not consider that existing users would be significantly disadvantaged and CCC were content with regard to maintenance matters [7.19.15].
- 7.19.28 The strategic case sets out the way in which rail users would benefit from the proposed alterations to the network. FLUG support this case [3.53 -3.56, 7.19.14].

**SOM 4(c) Impacts on flood risk and drainage**

No issues were raised in relation to this matter.

**SOM 4(d) Any other environmental impacts**

No issues were raised in relation to this matter.

**SOM 4(e) The suitability (including length, safety, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 7.19.29 The proposed route may be longer, which would be likely to impact mostly on walkers. However, this relates to a private right associated with the lakes, as well as the farmland, and neither the owner of the lakes or the owner/occupier of the farmland to the west have objected to the proposal. I consider that the proposal meets their needs and is suitable and convenient for the existing users.

**Conclusions**

- 7.19.30 Balancing all the relevant matters I consider that the Secretary of State should include C35 within the Order.

## 8. OTHER MATTERS

### The Case for the Applicant, Network Rail

#### Road Safety Audits

- 8.1 S J Tilbrook and Sue Tilbrook are the same person, the CEM (Contractor's Engineering Manager) for the ALCRS project. The CEM approved the designer's response report for Cambridgeshire (Document ref 367516/RPT019 Rev A<sup>308</sup>) and checked the second revision of the Stage 1 Road Safety Audit for Cambridgeshire (Document ref 367516/RPT014 Rev B<sup>309</sup>), for issue as part of MM's commission on the project. Jason Smith and J A Smith are the same person, who was involved in preparing the Audit Brief and approving the second revision of the Stage 1 Road Safety Audit for Cambridgeshire (Document ref 367516/RPT014 Rev B), for issue.
- 8.2 NR agreed that the Road Safety Team must be independent from the design team indicating that this was the case for the MM RSAs. The checking and signing off of the RSA did not mean that it was not prepared independently and it was not accepted that they were undermined by any familiarity with, or "pride" in, the proposals. The role of checker and approver had no bearing on the Audit outcome, as their role was to ensure that the deliverable was carried out in line with the project requirements; in this case, the carrying out of RSAs in accordance with HD19/15.
- 8.3 RSA report 367516/RPT014 Revision B was checked by the CEM and approved by Jason Smith. The document required a minor amendment (correcting one erroneous reference to a version of another document). This was documented as part of the review and acceptance procedure (document review notice DRN 024) and covering emails issued with the reports. A copy of revision A of the RSA report has been provided to allow comparison of the 2 versions of the document. There were no changes to the issues raised in the original version of the RSA document.
- 8.4 The principle of the CEM being the checker of the updated document and Jason Smith approving the document was discussed and agreed with the independent RSA team. Section 3 of the RSA Report, the Audit Team Statement, shows that all members of the Audit Team signed the document to confirm "*We certify that this audit has been carried out in accordance with the Highways England Departmental Standard HD 19/15.*" The Checker and Approver do not have roles in the Audit team.
- 8.5 Any document issued by MM has to be Checked and Approved in accordance with MM's Business Management System (BMS), which is certificated to ISO 9001. Under MM's BMS, all documents and deliverables have to be checked by a person (not the originator) with the requisite experience and approved by someone at a senior level from the project team. In view of the minor amendment to the document, which did not relate to the body of the findings of the RSA, the checker and

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<sup>308</sup> NR-INQ-09

<sup>309</sup> NR16

approver of revision B were considered appropriate to ensure that the document was being issued in line with MM's BMS requirements.

- 8.6 It is unfortunate that a typographical error occurred within a document that may cause some confusion. The documents concerned are set out below, with the correct information in the comment column.

Document	NR16	Comment
Cambridgeshire Stage 1 Road Safety Audit (Dec 2015) 354763/RPT219	The front cover of this document included in NR16 shows the Report Number as 354763/RPT219 Revision A	This is a Typo and the Cambridgeshire Stage 1 Road Safety Audit front cover should show the report number as 354763/RPT221 Revision A
Cambridgeshire Stage 1 Road Safety Audit (Aug 2016) 367516/RPT014	At paragraph 2 on page 2 of this document, reference is made to the previous Stage 1 RSA ref 354763/RPT221	This reference is correct and the report included in NR16 as confirmed above.
Cambridgeshire Stage 1 Road Safety Audit Response Report 367516/RPT019	At paragraph 2 on page 1 of this document, reference is made to the Stage 1 RSA carried out in December 2015 ref 354763/RPT221	This reference is correct and the report is included in NR16 as confirmed above.

- 8.7 The correct information is contained within NR16 and this is the RSA information relied upon. The RSAs have been carried out by an independent Audit team. A further Stage 1 RSA was carried out to consider updated proposals at 2 level crossing locations. This was issued as part of the evidence.

#### Traffic

- 8.8 Traffic Volume ATC surveys were commissioned on certain proposed diversion routes for a period of nine days, to include two weekends, with 24 hours of data to be recorded each day. These surveys were used to help understand the volume, composition and speed of traffic and how that might impact on the use of the route by PROW users.

#### Use of Highway Verges

- 8.9 With regard to the use of grass verges adjacent to the highway (highway verges) it is a general presumption that the fence line (or equivalent feature such as a hedge or drainage ditch) represent the Highway boundary. Whilst this may not always be the case this assumption is supported by case law, as referred to in Information Sheet no C10: Highway Verges published by the Open Spaces Society<sup>310</sup>. The Highway

<sup>310</sup> NR-INQ-06, Appendix A



Authorities<sup>311</sup> have commented where they are not highway verges and routes have been developed accordingly. CCC has been engaged with the potential routes and have not taken issue with them falling within the highway boundary. Where physical works would be required to the verges, they were referenced and included in the Book of Reference<sup>312</sup>.

- 8.10 Highway Authorities are able to remove grass verges to widen the carriageway. With regard to the retention of verges used for diverted routes in the long term the proposals have been discussed with CCC, who have not highlighted any planned improvements that could affect the proposals. Any highway improvement scheme should consider all highway users and, therefore, pedestrians would be taken into account in future schemes if such diversions occur under this Order.
- 8.11 Maintenance of highway verges is the responsibility of the Local Highway Authority. They have generally been included for use in their current state. Where maintenance over and above the normal regime was deemed necessary to maintain verges in a suitable condition for use by pedestrians, NR would agree an appropriate level of payment to the highway authority as part of the commuted sums. The matter of commuted sums has been discussed throughout the scheme development with CCC. The discussions aim to reach agreement on the principles on which the commuted sums would be calculated.

#### Signs

- 8.12 In relation to signing of routes, and long-term maintenance of signs, the level of design required at this stage of the project is set out in paragraph 1.7.1 of the Proof of Evidence<sup>313</sup>. Detailed design proposals would be agreed with CCC and the existing routes over the level crossings could not be closed until the Highway Authority certified completion of the alternative route to their satisfaction. Article 31 of the Order would confer powers on NR to place and maintain traffic signs relating to the construction or operation of the works, in consultation with CCC. Any additional maintenance burden on the Highway Authority would be dealt with through a commuted sum payment.

#### Compliance with Guidance

- 8.13 The Stage 1 RSAs were carried out prior to design freeze and preparation of the draft Order, in accordance with HD19/15. Two proposals have been subject to a further Stage 1 RSA, due to late changes in the design proposals, in line with HD19/15, paragraph 2.62. The RSAs carried out since Order deposition can be found in my evidence. No problems were identified as part of the RSAs.
- 8.14 Unlike a HA80 Order, for example, a TWAO scheme is not expected to be worked up to detailed design before the Order is made. However, sufficient assessment and design work has been carried out to have

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<sup>311</sup> In relation to all three of the Orders

<sup>312</sup> NR09

<sup>313</sup> NR32/1

confidence that the powers obtained under the Order would enable the diversion routes to be implemented.

- 8.15 Whilst HD 19/15 requires information on road collision data, traffic flows and NMU flows to be provided as part of the general scheme details, it is not a mandatory requirement. It is a mandatory requirement that if the RSA Team considers the RSA Brief to be insufficient for their purpose, they must request further information. Any information requested but not supplied to the RSA Team must be identified in the introduction to the RSA Report; no such request was made by the independent RSA Team. The information on road collision data, traffic flows and NMU flows was assessed by the design team as it became available, as part of overall assessment of the proposals. Stage 2 RSAs would be undertaken, where required, on completion of detailed design, and there is no reason why a decision on the Order proposals should be deferred until that assessment has been undertaken.

#### Down-grading of UCR to Byway Open to All Traffic

- 8.16 There has been a misunderstanding as to the law on this point. Although CCC contends that the proposed down-gradings would not be possible as a matter of law, a TWAO could achieve such a re-designation since it has the force of statute. It therefore displaces the common law presumptions – the “character” tests – which inform CCC’s position.
- 8.17 Although CCC believe these provisions are unnecessary, NR’s obligations in respect of level crossing infrastructure are different for unclassified roads and BOATs. An unclassified road crossing should be equipped with automated barriers, even if a TRO applies a width restriction or other limitation on use of the connecting roads but a BOAT does not require such barrier protection. The change is necessary for NR’s purposes.

## The Cases in Objection

### Cambridgeshire County Council (O12)

#### Down-grading of UCR to Byway Open to All Traffic

- 8.18 CCC have raised concerns over proposals to downgrade certain Unclassified County Roads (UCRs) to BOAT. These classifications relate to highways of the same status, i.e., public carriageways. The only difference relates to the character of the route and it is difficult to see how change could take place when all of the public rights afforded to the UCR would remain if the designation were changed to BOAT.
- 8.19 They did not understand how a railway level crossing, accepted by NR in cross-examination as having stone ballast, metal rails, and being very much the same wherever it was, might meet the "character test" for a BOAT (see the *Masters*<sup>314</sup>). Although suggested by NR that it might relate to the type of gates to be installed, this would only occur following the "down-grading" and implementation of a TRO.
- 8.20 The proposed "down-gradings" from UCR to BOAT would not be possible as a matter of law; you cannot downgrade something and retain the same level of rights. The changes are unnecessary because the desired end-result can be achieved by the proposed TRO. The Secretary of State is therefore requested to remove these "down-gradings" from the Order.

### Ramblers Association (O26)

- 8.21 A number of NR's proposed alternative routes would take users alongside roads. NR are relying on RSAs, which have been carried out by MM, to demonstrate that these routes are safe to use. The Ramblers have raised a number of concerns with the RSAs through the written evidence of Mr Russell, a technical director at Motion Consulting, which specialises in transport planning, transport engineering and highway design.<sup>315</sup>
- 8.22 These concerns include the fact that the Stage 1 RSAs that have been carried out do not factor in a number of pieces of data, including traffic speeds, traffic flows, NMU flows and collision data.<sup>316</sup> NR's response is that Stage 2 RSAs would be carried out at the detailed design stage.<sup>317</sup> However, this would not occur until after the Order was (in theory) made. There appears to be no legal mechanism in the order to ensure that these Stage 2 RSAs are carried out appropriately. The Ramblers, therefore, submit that the Order cannot be made on the basis of the Stage 1 RSAs alone.
- 8.23 Ms Tilbrook highlighted that the auditing team did not request more information from the design team, which they must do, according to the HD 19/15 guidance if they think that they have insufficient information for their purposes. The Ramblers submit that the question is not whether or not the audit team had enough information for the purposes of

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<sup>314</sup> OBJ-12-INQ-08 (attached)

<sup>315</sup> OBJ-26-INQ-11

<sup>316</sup> Mr Russell's proof of evidence for the Essex Inquiry, section 3.

<sup>317</sup> Ms Tilbrook XX.

carrying out a Stage 1 RSA, but rather whether this Order can be made on the basis of Stage 1 RSAs, with no legal guarantee that Stage 2 RSAs would be undertaken.

8.24 Mr Russell's evidence also highlights that NR is relying on highway verge for a number of its alternative routes. Mr Russell highlights<sup>318</sup> that it is not clear:

- if the highway verge is, indeed, highway land;
- how NR intends to secure the continued use by pedestrians of highway verge; or,
- how NR would ensure that highway verge would be maintained.

8.25 NR has explained that it is relying on the field boundary presumption to establish the highway boundary.<sup>319</sup> However, this presumption is rebuttable. It would have been relatively easy to ask the Highway Authority to carry out a search of their records to establish ownership of the land. This does not appear to have been done.

8.26 It is not possible for NR to guarantee that future highway or development schemes would not impact on the highway verge. NR point to the fact that in considering any future scheme, the highway authority would consider the impact on pedestrian users but that is no answer to the point. NR are not proposing to add those parts of the alternative routes that rely on highway verge onto the DMS and so these routes would lack the legal protection of the current PROW.

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<sup>318</sup> Mr Russell's proof of evidence for the Essex Inquiry at 1.11.

<sup>319</sup> NR-INQ-06 at 1.2.2.

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### Road Safety Audits

- 8.27 There was understandable concern to ensure that the RSAs had been carried out correctly, due to the movement of users in some cases from crossing the railway line to crossing, or travelling alongside, roads [8.21]. Confusion clearly did arise in relation to the numbering of the relevant documents [8.6]. Having seen the relevant pages, as shown in the Table above, I consider that the Secretary of State can be satisfied that there was nothing more than a typographical error and that the correct information has been included in the documents relied on [8.7].
- 8.28 The project team information has been provided in detail [8.1 – 8.5] in response to the questions raised. There is no indication that the appropriate procedures have not been followed.
- 8.29 Traffic data was part of the information provided to the Inquiry<sup>320</sup> as was non-motorised use in the nine-day censuses undertaken<sup>321</sup> [8.8, 8.22]. This data was used in the development of the routes and I have taken account of it as appropriate in considering the proposals.

### Compliance with Guidance

- 8.30 I consider that there is evidence of compliance with the guidance in the development of this scheme [8.13], with no request for further data from the RSA team [8.15]. As to whether the Order should be made at this stage [8.23] I consider that the Secretary of State can be satisfied that there is sufficient information to proceed with the Order at this stage [8.14].
- 8.31 The Order provides a 'backstop' with routes needing to be completed to the satisfaction of the highway authority (articles 11(2) and 16(1)) and level crossings unable to be stopped up and discontinued until that has been done (article 14(3)). These matters have been set out in the side agreement [3.50].
- 8.32 HD 19/15 indicates that RSA Stage 1 would be undertaken at the completion of preliminary design, (for example at the Order Publication Report Stage) before publication of draft Orders and before planning consent is applied for. Stage 2 RSA will be undertaken at the completion of the detailed design stage.

### Use of Highway Verges

- 8.33 The concern about potential overall loss of routes – in the short term or long term – through use of highway verges is understandable [8.24]. Whilst the presumption that the verges are part of the highway is a

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<sup>320</sup> NR-32-2, Appendices 1 and 13

<sup>321</sup> NR-32-1

rebuttable one, CCC have been involved in the development of the scheme in this respect [8.9, 8.25]. Maintenance and future management, including signage [8.12] would become matters for the highway authority and, on balance, the Secretary of State can be satisfied that where verges are proposed as part of a proposed route this would not be inappropriate [8.10, 8.11, 8.26].

#### Down-grading of UCR to Byway Open to All Traffic

8.34 CCC raise valid points with regard to the proposed down-gradings [8.18 – 8.20]. However, I agree with NR that there has been a misunderstanding as to the legal force of a TWAO in relation to such matters [8.16].

8.35 NR have indicated that the changes would allow them to treat the affected routes differently in the future and that this would be necessary for their purposes [8.17], relating to the overall aims of the Order. I consider that the Secretary of State can be satisfied that such proposed changes would be possible through the TWAO and necessary in relation to the overall scheme.

#### Other matters

8.36 The Order and plans deal with unrecorded routes in the vicinity of the known, or recorded, routes. This extinguishes any rights which may exist on those alignments, ensuring that the Order deals completely with routes in this area as a whole.

## 9. NON-CROSSING SPECIFIC OBJECTIONS/REPRESENTATIONS

### The Cases in Support

#### Alan Mayles (S1)

- 9.1 Mr Mayles supports the NR Anglia Level Crossing Reductions TWA Order. He wants to see the Cambridgeshire Level Crossing Reduction Order approved and implemented as soon as possible.
- 9.2 Level crossings are the most serious accident risk on the railway and the closure of these level crossings would reduce accidents and improve safety. Mr Mayles would like 8-car trains to King's Lynn as soon as possible, which would require platform works at Waterbeach and Littleport<sup>322</sup> Stations.
- 9.3 He asks if NR could extend the platforms using permitted development rights under The Town and Country Planning (General Permitted Development)(England) Order 2015<sup>323</sup>. This would mean there was no need for planning permission or a TWAO to extend these platforms. Until this is done there would be few direct trains between King's Lynn, Watlington, Downham Market, Littleport and Waterbeach to the new Cambridge North Station. Rail commuters from these stations to the Cambridge Science and Business Parks would have to change trains at Cambridge or Ely so Mr Mayles would like to see this work done as soon as possible.

#### Crosscountry Trains (S5)

- 9.4 XC Trains Ltd is supportive of NR's efforts to reduce the risk arising from level crossings on the Anglia route, and would work with them to process closures via the normal process of Network Change. Closure of level crossings is one of the most significant ways in which the risk to our passengers and staff from collisions can be reduced.
- 9.5 XC Trains consider that implementation of the proposals would lead to increased reliability and efficiency for the railway industry. This could assist with future improvements such as journey time reductions.

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<sup>322</sup> C31

<sup>323</sup> SI 2015 No. 596

## The Cases in Objection

### Guy Bettley-Cooke (O1)

- 9.6 The Level Crossing Reduction TWA Order (The Cambridgeshire Level Crossing Reduction Order) 2017 has been passed to the Secretary of State at the DfT for his decision regarding the stopping-up of numerous historic public rights-of-way, where they are crossed by later railway lines, in Cambridgeshire.
- 9.7 The Secretary of State at the DfT is also the sole Director of NR Ltd. As NR Ltd, and its associated sub-companies, stand to benefit financially from cost-saving decisions potentially implemented by the Secretary of State – i.e. their own Director – this is a clear Conflict of Interest and potentially unlawful.
- 9.8 The same situation would potentially exist in the forthcoming Level Crossing Reduction Orders for the Counties of Suffolk, Essex and Hertfordshire, and anywhere else in the country.
- 9.9 Mr Bettley-Cooke is an academic researcher and regular user of railway footpath-crossings in Cambridgeshire, Suffolk and elsewhere.

### BNP-Paribas Real Estate *on behalf of* The Royal Mail Group Limited (O44)

- 9.10 The Royal Mail Group Limited (RMG) is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011, RMG has a statutory duty to deliver mail to every residential and business address in the country as well as collecting mail from all Post Offices and post boxes six days a week.
- 9.11 RMG's postal sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can have direct consequences on RMG's operations, affecting its ability to meet its Universal Postal Service Obligation and its ability to comply with the regulatory regime for postal services. This can present a significant risk to RMG's business.
- 9.12 Whilst RMG understands the requirements for NR to undertake the works as described in the proposed Order, RMG formally objects on the grounds that their operational and statutory duties to collect and deliver mail may be adversely affected. From the information supplied, RMG is unable at this stage to fully determine the potential impact on its ability to perform its statutory duties. RMG therefore reserves the right to produce further grounds of objection once further details are released, unless their concerns can be satisfied.



## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **SOM 1 The aims and the need for the proposed Network Rail (Cambridgeshire Level Crossing Reduction) Scheme ("the scheme").**

9.13 There is support for the scheme which reflects the matters raised by NR in their strategic case [9.1, 9.2, 9.4, 9.5 and 9.12].

### **SOM 4(a) The likely impacts on land owners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking or access their properties**

9.14 An issue was raised regarding disruption to the road network and the potential effect on mail deliveries [9.10 and 9.11] although no objection was raised in relation to specific crossings.

9.15 Where a public road is downgraded to prevent public use, this would prevent use by the Royal Mail for deliveries. However, provided that the alternative route was found to be suitable and convenient for all existing users this should not impact on their undertaking. Where the route provides access to property, which is not practicable by another route, Authorised Users and their lawful invitees and others providing services will be permitted to use the route<sup>324</sup>.

9.16 In relation to any effect on land/apparatus Schedule 13 to the Order (Apparatus and Rights of Statutory Undertakers etc. in Stopped Up Streets) contains specific safeguards. Taking all these matters into account there should be no significant impact on the ability of RMG to carry on their undertaking.

### **SOM 5 The measures proposed by Network Rail to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of utility providers or statutory undertakers.**

9.17 As noted, [9.16] protective measures have been set out in the Order.

### **SOM 10 Any other matters which may be raised at the Inquiry.**

9.18 Concern has been raised regarding the relationship between NR as the applicant and the Secretary of State as the decision-maker [9.6 – 9.9]. I am not aware that the Secretary of State is a Director of NR, as suggested, and I have no relationship to NR.

9.19 The application has been dealt with by way of this report to the Secretary of State, following a public inquiry, to assist with the decision-making process. I consider that the process has been open,

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<sup>324</sup> NR-INK-19

fair and transparent, as appropriate in dealing with a matter of this type.

- 9.20 I do not consider it appropriate to deal with the query relating to the separate, although related, matter [9.3] in this report.

## 10. FUNDING

### SOM 8 NR's proposals for funding the scheme

#### The Case for the Applicant, NR

- 10.1 The anticipated final cost of implementing the scheme is £3.931m<sup>325</sup>. This would be funded in Control Period 5 (CP5) by the National Level Crossing Risk Reduction Fund and Anglia Route signalling funding. The CP5 funding has been secured for the project. The funding from the National Level Crossing Risk Reduction Fund was secured as it met with the criteria of the fund in regard to delivering risk reduction at level crossings. The project would deliver risk reduction through the removal / downgrade of level crossings and the removal of the risk to users at each location. Anglia Route has allocated further funding from its signalling budget, which is utilised for asset management purposes, to enable a larger proportion of the level crossing closures / downgrades to be completed in CP5.
- 10.2 Anglia Route would apply for funding in CP6 to enable implementation of works at level crossings after March 2019. The authorised funds in CP5 and the applied for funds in CP6 would meet the capital cost of implementing the Order inclusive of compensation and any acquisition of blighted land as identified within section 149 of the TCPA.
- 10.3 The ORR Periodic Review 2013<sup>326</sup> identified safety as a regulated output of CP5, with NR required to deliver a plan to maximise the reduction in risks of accidents at level crossings, using a £99m ring-fenced fund<sup>327</sup>.
- 10.4 NR's level crossing asset policy proposes to reduce the safety risk that level crossings contribute to the rail network. Whilst the policy considers renewal and maintenance issues, the focus is on reducing risk. NR has developed a model to assess the risk reduction that can be achieved by a range of potential interventions and a key output of the policy is the assessment of how the level crossing safety fund can be applied to achieve the greatest reduction in risk.
- 10.5 NR made a commitment in March 2012 to reduce the risk of accidents at level crossings by 50% by the end of CP5 through level crossing closures, renewals and upgrades. The best benefit to cost ratio comes from closing high risk passive crossings (crossings with fixed warning signs but with no barriers, warning lights or warning sounds).
- 10.6 Anglia route is divided into 14 Level Crossing Manager (LCM) zones. Each zone has between 50 and 76 level crossings with about 61 on average. The frequency of inspection varies by the type of level crossing, from a maximum inspection interval of 7 weeks for controlled crossings, to 6 months for footpath and bridleway crossings. The reduction in the number of level crossings that needs to be managed would result in a reduction in headcount from 14 to 13 LCM, representing a saving of approx. £40,000 per annum.

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<sup>325</sup> NR07

<sup>326</sup> NR15, Final determination of NR's outputs and funding for 2014 – 19

<sup>327</sup> This fund combines £67m from the DfT HLOS and £32m of further funding.

- 10.7 The assets themselves represent a significant ongoing cost to maintain the status quo. If the Order is implemented, it would represent a like for like renewals cost saving of £3,311,150 over a 30-year period<sup>328</sup>.
- 10.8 In addition to the renewals costs, the implementation of the Transforming Level Crossings strategy<sup>329</sup>, with the elimination of passive level crossings, would result in a minimum capital saving of £15,063,675 over a 30-year period. These estimates are based on the costs contained in the CP6 cost model<sup>330</sup>.
- 10.9 The Order would also provide a saving of £5,801,760 in asset inspections and general maintenance over a 30-year period. This is based on the frequency of inspections outlined in NR21.
- 10.10 On the commencement of CP5, in addition to the focus on the highest risk level crossings, Anglia Route also sought to obtain powers to rationalise the number of level crossings across the region through the closure / downgrade of multiple crossings, as documented in the Anglia Crossing Reduction CRD<sup>331</sup>. This Order progresses level crossings that fall within phases 1, 2 and 4 of the CRD and are being progressed first due to the minimal infrastructure investment required.

### **Inspector's Conclusions**

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 10.11 Although the final outcome of the application for funding under CP6 was not before the Inquiry [10.2] I consider that the funding statement supports all other evidence from NR that the funding to implement the scheme in full would be forthcoming.

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<sup>328</sup> NR-INQ-05, NR-INQ-35, NR-INQ36,36-a and 36-b

<sup>329</sup> NR17

<sup>330</sup> NR26, Appendix D

<sup>331</sup> NR18

## 11. COMPULSORY PURCHASE

**SOM 6** Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the DCLG Guidance on the “Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (published on 29 October 2015)<sup>332</sup>:

- (a) whether there is a compelling case in the public interest for conferring on NR powers compulsorily to acquire and use land and rights in land for the purposes of the scheme; and
- (b) whether the land and rights in land for which compulsory acquisition powers are sought are required by NR in order to secure satisfactory implementation of the scheme.

### The Case for the Applicant, NR

- 11.1 The Order applied for includes the compulsory acquisition of rights over third party land for the proposed works and ancillary purposes, including worksites; provisions for the temporary use of land in connection with the authorised project; and the extinction and creation of private rights. Those who have land or an interest in land acquired from them temporarily would be entitled to compensation and landowners whose property is affected by the works may be entitled to compensation in certain circumstances.
- 11.2 The Order applies Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring NR to pay compensation to qualifying parties under the Statutory Compensation Code (the Code). The Code is an amalgamation of numerous Acts of Parliament<sup>333</sup> and legal precedents that have evolved over 150 years.
- 11.3 NR is under an obligation under section 5(6) of the TWA which requires NR not to extinguish any public right of way (PROW) unless the Secretary of State is satisfied that an alternative PROW has been provided or that the provision of an alternative right of way is not required. Therefore, in accordance with both the DCLG Guidance on the Compulsory Purchase process and the Crichel Down Rules (DCLG Guidance) and Guide to TWA Procedures, NR identified a number of key rights and powers to be sought in the Order, as set out above.
- 11.4 NR is willing to seek to acquire the temporary occupation or rights in land by agreement, in accordance with the DCLG Guidance, but to provide suitable and convenient PROWs, which connect to the existing network, NR has sought to compulsorily acquire the necessary land or rights in land. NR has limited the extent of the acquisition to only what is reasonably needed. It has therefore taken powers only to temporarily occupy land so as to create the new PROWs and has not sought to acquire outright strips of private land, which would be disproportionate

<sup>332</sup> This was updated by the Ministry of Housing, Communities & Local Government in February 2018 to reflect legislative changes and case law

<sup>333</sup> In particular the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and the Land Acquisition Act 1981

to the Scheme. NR considers that there is a compelling case in the public interest to acquire the necessary use and rights in land related to the closure and downgrade of level crossings as set out in the Order.

- 11.5 These powers would guarantee that, should the Order be made, all the land required for the Scheme can be acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to sell or licence its interest. It would also ensure that no adverse interests prevent the Scheme being delivered. In practice, it would be impossible to assemble all the necessary land interests in a reasonable timescale without the use of such compulsory powers.
- 11.6 The key rights and powers in the Order would be as set out below. The rights set out are all required to facilitate delivery of the Scheme:
- Closure of level crossings subject to opening of new rights of way
  - Closure of level crossings without substitution
  - Redesignation of Highways
  - Creation and maintenance of new highway
  - Permanent acquisition of land
  - Permanent acquisition of rights of access over land.
  - Temporary Rights for construction purposes over land
  - Temporary Rights of Entry for Maintenance Purposes
  - Powers to Extinguish Private Rights
  - Acquisition of Permanent Private Rights of Access
  - Grant of rights over level crossings
  - Additional Rights of Entry
- 11.7 Where NR would impact upon private land and rights, the Order provides for compensation to be paid to the landowners. The compensation provisions vary depending upon the rights being acquired or extinguished. All property owners who had rights imposed on their land would be entitled to claim compensation in accordance with the Compensation Code, which provides a consistent approach to the assessment of fair compensation. In addition to compensation for the value of land taken, it would also be payable in respect to any loss in a landowner's retained property caused by it being severed from the land acquired, or by the Scheme itself. Compensation is also payable in respect to disturbance losses resulting from construction of the Scheme.
- 11.8 Article 16(3) of the Filled Order makes express provision for compensation to be paid for depreciation in the value of the interest in land or for damage suffered by being disturbed in the enjoyment of the

land by applying the provisions of section 28 of the HA80 where new PROW would be created.

- 11.9 The provisions are restricted to claiming for loss incurred on the land across which the path crosses rather than general loss to the interest which is affected by the land. This is because the landowner retains the land subject to the imposition of the new public right of way.
- 11.10 In relation to land to be occupied temporarily NR must pay compensation for any loss or damage arising from the exercise of the powers in the Order and before giving up temporary possession of such land NR must restore the land to the reasonable satisfaction of the owners.
- 11.11 Hence although the Order provides NR with powers to interfere with private land interests, such interference is subject to the payment of compensation and the interference is kept to only that which is required to secure the purposes of the Order.
- 11.12 Article 1 of the First Protocol to the European Convention on Human Rights states that "Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".
- 11.13 The Order is being pursued in the public interest, as required by Article 1 of the First Protocol where compulsory acquisition of property is concerned. The Order, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public interest in securing the benefits of the Scheme to the national railway network. Therefore, the interference with Convention rights is justified
- 11.14 There are a significant number of interest holders included in the Book of Reference<sup>334</sup>. Of these a number of landowners objected to and made representations regarding the Scheme. It can be seen that the majority of interest holders have not sought to object to or make representations in relation to the Order.
- 11.15 The land acquisition process was set out in detail in the evidence. Those landowners whose interests in land would be adversely affected by the Order would receive compensation, taking into account the impact of, e.g. a new footpath on the agricultural production.
- 11.16 Where land and rights would be acquired by the Order, NR submits that a compelling case for that compulsory acquisition has been made. Where rights over the railway would be extinguished, the case is founded squarely in the Order's objectives. Where land and rights

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<sup>334</sup> NR09

are acquired to create diversionary routes, the compelling case is that there is a compelling case for closure of the crossing for all the reasons set out above; and, it is necessary to provide the diversionary route to accommodate existing users, which creates a compelling case for the acquisition of land and rights to do so.

- 11.17 The NFU suggested that there had been a failure to consult with landowners but that is incorrect, as Mr Smith's evidence makes clear. NR has met with and written to affected landowners, although in most cases these discussions have not materialised into agreements. This reflects the fact that most of the affected landowners would rather not see their land interests interfered with. The position of the Hurrells is an example; they complain of a failure to negotiate, but when they articulate the substance of what they seek from that negotiation, it is that NR should abandon their proposals altogether. That is not a position which is capable of being negotiated around.



## **The Cases in Objection**

### **Ramblers Association (O26)**

- 11.18 If the Ramblers' submissions, set out in the Strategic Case, are accepted, then it follows that NR has not demonstrated a "compelling case in the public interest", as is required for the exercise of compulsory purchase powers. Mr Smith<sup>335</sup> agreed in cross-examination that were the Inspector to find that NR's evidence had not demonstrated that the scheme was in the public interest then the grounds for a compulsory purchase order would not be met.

### **National Farmers Union (O43)**

- 11.19 The NFU has been concerned throughout the consultations that NR have not considered the full impact that closing some of the crossings would have on some farm businesses or the effect of some of the diversions of proposed rights of way. It is unacceptable to compulsory close a right of access which may be a private right of use with vehicles without providing a suitable cost-effective alternative access to the farm businesses affected. It is felt that NR have not considered the full economic implications of closing the crossings to farm businesses from business interruption and loss of business in both the short and long term.
- 11.20 The NFU objects to NR being granted compulsory powers to carry out any closures of crossings or to be able to divert or create any new footpaths or bridleways until NR has engaged and carried out meaningful negotiation with landowners, farmers and the NFU.

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<sup>335</sup> NR29

## Inspector's Conclusions

*Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

- 11.21 General matters relating to the Compulsory Purchase Powers have been set out under the Strategic case<sup>336</sup> and in relation to the Funding<sup>337</sup>. If the Secretary of State is satisfied with the matters as discussed there [11.18] then I consider he can be satisfied, 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 this 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 that all 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.
- 11.22 NR has sought a number of rights and powers to avoid any impediment to implementation [11.1 and 11.3 – 11.6]. NR remains in negotiation with landowners for acquisition by agreement [11.4, 11.14 and 11.19] such that the requirement for the use of the compulsory purchase powers would be limited.
- 11.23 Where there is an impact on private land and rights compensation would be paid [11.2, 11.7 – 11.11]. Where I have 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 [11.19].
- 11.24 As set out in the Strategic case I consider that the scheme is in the public interest and, therefore, with the exception of the crossings which are recommended not to be included within the Order, I consider that the Secretary of State can be satisfied that a clear and compelling case in the public interest exists, sufficient to justify compulsory purchase where required [11.12, 11.13 and 11.18]. Nevertheless, should the Secretary of State conclude in relation to any crossing that it should be included in the Order, contrary to my recommendation, I consider that the compulsory purchase case would be met.

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<sup>336</sup> Section 3 of this report

<sup>337</sup> Section 9 of this report

## 12. PLANNING CONDITIONS

### **SOM 7 The conditions proposed to be attached to the deemed planning permission for the scheme, if given, and in particular whether those conditions satisfy the six tests referred to in Planning Practice Guidance, Use of Conditions (Section ID:21a)**

12.1 CCC had raised five objections to Network Rail's Request for deemed planning consent relating to:

- Bridge design (6.31 of CCC's Statement of Case ('SoC'))
- Landscaping (6.32 of CCC's SoC)
- Haul routes (6.33 of CCC's SoC)
- Archaeology (6.34-6.35 of CCC's SoC)
- Ecology (6.36-6.39 of CCC's SoC)

12.2 In consideration of the Side Agreement<sup>338</sup> and other negotiations which resulted in amendment to the Archaeology and Ecology planning conditions, agreement was reached on all of these areas and a revised planning request agreed<sup>339</sup>.

12.3 NR requested, pursuant to rule 10(6) of the 2006 Rules a direction from the Secretary of State under Section 90(2A) of the TCPA that, subject to the matters below, planning permission so far as it is required shall be deemed to be granted for the development proposed to be authorised by the draft Order<sup>340</sup>.

12.4 The relevant matters are that development for which planning permission is requested is development which, in respect of any works or matters, is carried out within any of the limits or at any of the places authorised by the Order.

12.5 The planning permission is intended to be granted subject to the proposed planning conditions set out below<sup>341</sup>. These include conditions reserving for subsequent approval of the local authority matters relating to, landscaping, archaeology, ecological mitigation, and working hours.

12.6 The designs of the proposed routes will follow the Design Guide<sup>342</sup>.

12.7 The proposed planning conditions are:

Interpretation

In the following conditions:–

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

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<sup>338</sup> NR-INO-29

<sup>339</sup> NR-INO-33

<sup>340</sup> This supersedes the request and suggested conditions set out in NR10

<sup>341</sup> NR-INO-33, Schedule 1

<sup>342</sup> NR12

“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 sub-paragraph (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, C14 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, C14 and C22" means the development relating to the level crossings at Coffue Drove, Eastrea Drove and Wells Engine.

*Reason: To ensure that the significance of historic environment assets is conserved in line with NPPF section 16<sup>343</sup>.*

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.*

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<sup>343</sup> Note this has been updated to reflect the revised NPPF

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## Inspector's Conclusions

- 12.8 The NPPF sets out that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. This applies to conditions 2, 3, 6 and 7. I consider that the reasons set out above provide justification to ensure satisfactory external appearance; in the interests of visual amenity; to protect the ecological value of the area and to ensure that the significance of historic environment assets is conserved.
- 12.9 I consider that the conditions have been kept to a minimum but would be necessary, for the reasons provided in relation to each condition above. They satisfy the 'six tests' being also relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 12.10 Condition 10 was proposed to be that "*Except where work is taking place on Network Rail's land, construction of the development will only be carried out between the hours of 8.00 am and 6.00pm.*" An amount of work – such as removal of crossing boards and erection of fences – would be on NR's land.
- 12.11 Although this condition had been agreed between the relevant parties, I do not consider it would be reasonable to allow such work, which could be in close proximity to residential properties, to take place outside of the general working hours. However, I recognise that NR may wish to carry out at least some works between the hours of 6.00pm – 8.00am in order to minimise disruption to train services. To balance these matters I consider that the condition should apply generally, rather than just to land not in NR ownership, noting that condition 11 would allow NR to apply to the local planning authority for a revision to the condition, where required.
- 12.12 If the Secretary of State is minded to grant the planning permission as requested, then the conditions referred to should be included. Should the Secretary of State decide to include all crossings in the Order the conditions at Annex 2 should be applied, referring to the crossings I have recommended be not included in the Order as made.

### 13. RECOMMENDATIONS

13.1 Taking account of all the matters before the Inquiry I consider that the Secretary of State can be satisfied that the case for making this Order has been shown. However, 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 Report. The table below summarises the recommendation for each crossing.

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 (Adam's Crossing)	Include*	
C34	Fysons	Include*	
C35	Ballast Pit	Include	

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



13.2 I recommend that the Order be made subject to the appropriate modifications as set out in the Filled Order<sup>344</sup> and the following further modifications:

- In relation to the '*Grant of rights over level crossings*':
  - delete text of sub-paragraph 28(2)(b) "*Poplar Drove crossing between points P050 and P051 in the Parish of Littleport*";
  - renumber sub-paragraphs 28(2)(c) and (d) to (b) and (c);
- In relation to Schedule 1, Scheduled Works:
  - delete text "*Work No. 1 – A footbridge, commencing at a point 230 metres south-west of Wype Road crossing the Ely to Peterborough railway and terminating at a point 10 metres north-east of its commencement.*";
  - delete text "*Parish of Littleport Work No. 6 – A bridge, commencing at a point 240 metres north-east of Poplar Drove crossing the Ely to King's Lynn railway and terminating at a point 15 metres north-east of its commencement.*";
  - delete text "*Parish of Soham Work No. 7 – A footbridge, commencing at a point 25 metres north-east of Mill Drove crossing the Ely to Bury St Edmunds railway and terminating at a point 8 metres west of its commencement.*";
  - to avoid potential confusion in relation to the Works and Land Plans<sup>345</sup> it is not recommended to renumber the remaining works;
- In relation to Schedule 2, Closure of Level Crossings Subject to opening of a New Highway:
  - delete text "*Brickyard Drove between points P001A and P002; Footpath 48 between points P001, P001A and P002; and Footpath between points P001 and P003*";
  - delete text "*Furlong Drove between points P015 and P016; BOAT 33 between points P014, P015, P016 and P017; Footpath 8 between points P014 and P019; Bridleway between points P021 and P022; and Bridleway between points P014, P018 and P020*";
  - delete text "*Parish of Littleport; Clayway between points P042 and P043; Willow Road/Willow Row between points P052A and P053; Footpath 11 between points P041, P042 and P043; Footpath not on definitive map between P044, P045 and P043; BOAT 30 between points P052, P052A and P053; Footpath between points P046 and P047; Footpath between points P046 and P047; and Bridleway between points P051 and P052*";

<sup>344</sup> NR-INQ-38

<sup>345</sup> NR08

- delete text "*Parish of Soham; Leonards between points P078 and P079; Footpath 101 between points P077, P078, P079 and P080; Footpath not on definitive map between points P077, P082, P083 and P080; Footpath 114 between points P084 and P085; Footpath between points P080 and P081; Footpath between points P080 and P081; and Footpath between points P084 and P086*";
- delete text "*District of South Cambridgeshire Parish of Harston; No. 37 between points P124 and P125; Footpath 4 between points P123, P124, P125, P126 and P133; Footpath not on definitive map between points P125 and P126; Footpath between points P123 and P127, between points P128, P129, P130 and P131 and between points P131A and P132; and Footpath between points P123 and P127, between points P128, P129, P130 and P131 and between points P131A and P132*";
- delete text "*Parish of Meldreth; No. 20 between points P143 and P144; Footpath 10 between points P141, P142, P143, P144 and P145; Footpath not on definitive map between points P140 and P142; Footpath between points P145 and P146 and between points P147, P148, P149 and P141; and Footpath between points P145 and P146 and between points P147, P148, P149 and P141*";
- In relation to Schedule 4, Redesignation of Highways:
  - delete text "*District of East Cambridgeshire Parish of Littleport; BOAT 30 between points R001 and P052; Byway open to all traffic; Bridleway; Poplar Drove between points P050 and P051; Public Road; Byway Open to All Traffic with width restriction (subject to the use by vehicular traffic by people authorised by Network Rail)*";
- In relation to Schedule 5, Acquisition of Land for Authorised Works:
  - delete text "*Parish of Littleport; 11B, 13B; Provision of a turning head*";
- In relation to Schedule 6, Land In Which Only New Rights Etc. May Be Acquired:
  - delete text "*District of South Cambridgeshire Parish of Harston; 22; Access for creation of public right of way*";
  - delete text "*Parish of Meldreth; 09, 11; Access for creation of public right of way; 05, 16; Access for removal of level crossing*";
  - delete text "*Parish of Whittlesey; 01, 05, 07; Access for removal of level crossing*";
- In relation to Schedule 7, Land Of Which Temporary Possession May Be Taken:

- delete text "*District of South Cambridgeshire Parish of Harston; 03A, 05A, 10, 18; Worksite; 03: Creation of public right of way and access for removal of level crossing; 05; Access for removal of level crossing and access for removal of public right of way;*";
- delete text "*District of East Cambridgeshire Parish of Littleport; 01, 02; Access for removal of level crossing and public right of way improvements; 03, 06, 30: Creation of public right of way; 04, 05, 09, 13A; Worksite; 07, 08, 10, 14; Bridge; 12; Creation of public right of way and access for construction of bridge; and 32, 33, 35; Access for removal of level crossing and worksite;*";
- delete text "*District of South Cambridgeshire Parish of Meldreth; 02, 04, 08, 10, 27, 27: Creation of public right of way; 12, 13, 14; Worksite, access for removal of level crossing and creation of public right of way; 15, 18, 20, 21; Worksite; 23; Access for removal of level crossing;*";
- delete text "*District of East Cambridgeshire Parish of Soham; 06A; Footbridge; 06B, 11A; Worksite; 15, 16, 17; Creation of public right of way; 06, 07, 08; Creation of public right of way and access for removal of level crossing; 10, 11; Access for removal of level crossing and access for creation of public right of way; and 19; Worksite;*";
- delete text in relation to District of Fenland Parish of Whittlesey "*02; 06; 08, 15, 16; 09, 10, 14; and 11, 12, 13;*";
- In relation to Schedule 8, Streets Subject to Alteration of Layout;
- delete text in relation to District of East Cambridgeshire Parish of Littleport "*Victoria Street; Provision of footway;*";
- In relation to Schedule 9, Streets Subject to Street Works:
  - delete text in relation to District of East Cambridgeshire Parish of Littleport "*Victoria Street;*";
  - delete text "*Parish of Soham; Mill Drove;*";
  - delete text "*District of South Cambridgeshire Parish of Harston; B1368 London Road;*";
  - delete text "*Parish of Meldreth; Station Road;*";
- In relation to Schedule 10, Streets to be Permanently Stopped up:
  - delete text "*Footpath 23; Between points P067, P068, P069 and P070; and Footpath between points P067, P071 and P070;*";
- In relation to Schedule 11, Streets to be Temporarily Stopped up:
  - delete text in relation to County of Cambridgeshire District of Fenland Parish of Whittlesey "*Footpath 48; Between points P001, P001A and P002;*";

- delete text in relation to District of East Cambridgeshire Parish of Downham "BOAT 33; Within Order limits; Footpath 8; Between points P014 and P019; A Furlong Drove; Within Order limits; Path not on definitive map; and Between points P014, P018 and P020";
- delete text in relation to Parish of Littleport "Victoria Street; Within Order limits; Sandhill; Within Order limits; Footpath 11; Between points P041, P042 and P043; Footpath not on definitive map; Between points P044, P045 and P043; Poplar Drove; Within Order limits; BOAT 30/Willow Row Drove; Within Order limits; BOAT 31; Within Order limits; Hale Fen; and Within Order limits";
- delete text "Parish of Soham; Mill Drove; Within Order limits; Footpath 101; Between points P077, P078, P079 and P080; Footpath not on definitive map; Between points P077, P082, P083 and P080; Footpath 114; Within Order limits";
- delete text "Parish of Harston; B1368 London Road; Within Order limits; Footpath 4; Footpath 4 between points P123, P124, P125, P126 and P133; Footpath not on definitive map; Between points P125 and P126";
- delete text "Parish of Meldreth; Station Road; Within Order limits; Footpath 10; Between points P140, P141, P142, P143, P144 and P145; Footpath not on definitive map; Between points P140 and P142; BOAT 12; Within Order limits";
- In relation to Schedule 15, Prohibition of Vehicular Traffic:
  - delete text "Parish of Littleport; Poplar Drove; No vehicles exceeding 1.525 metres in width between points P050 and P051";

13.3 Certain Works and Land Plans<sup>346</sup> were updated. Where the plans remain relevant, following the recommendations set out above, the amended plans<sup>347</sup> should be used in the making of the Order. If determined to include C11 but without the southern bridleway Sheet 6 of the Works and Land Plans would not be required in the Order.

13.4 The deemed planning permission should be granted, subject to the conditions set out in paragraph 12.7 of this Report.

*Heidi Cruickshank*

**Inspector**

<sup>346</sup> NR08

<sup>347</sup> NR-INQ-40

**APPEARANCES****For Network Rail:**

Mr Richard Turney	Instructed by Winckworth Sherwood <i>on behalf of</i> Network Rail
<i>who called:</i> Dr E Algaard	Strategic case
Director Route Safety and Asset Management, Anglia Route, Network Rail	
Mr M Brunnen	Strategic case
Head of Level Crossings, Network Rail	
Mr Day, Network Rail	C11, A Furlong Drove
Mr A Kenning	C01, Chittering, C02, Nairns No. 17, C33 Jack O'Tell (Adam's Crossing) and C34, Fysons
Senior Project Engineer, level Crossing Development Team, Network Rail	C04, No Name No. 20 C07, No. 37, Harston C11, A Furlong Drove C14, Eastrea Cross Drove C20, Leonards C24, Cross Keys C25, Clayway C26, Poplar Drove & C27, Willow Row Drove C35, Ballast Pit
Mr J Prest	C01, Chittering, C02, Nairns No. 17, C33 Jack O'Tell (Adam's Crossing) and C34, Fysons
Route Level Crossing Manager, Anglia Route, Network Rail	C25, Clayway
Mr J Smith MRICS FAAV Bruton Knowles	C04, No Name No. 20 C11, A Furlong Drove C14, Eastrea Cross Drove C24, Cross Keys C26, Poplar Drove & C27, Willow Row Drove C35, Ballast Pit

Ms Sue Tilbrook BEng(Hons) C04, No Name No. 20  
 Projects Director, Mott C07, Harston No. 37  
 MacDonald C11, A Furlong Drove  
 C14, Eastrea Cross Drove  
 C20, Leonards  
 C24, Cross Keys  
 C25, Clayway  
 C26, Poplar Drove & C27, Willow Row Drove

**In Support:**

Lynne Parnell (S4) C02, Nairns No. 17, C33 Jack O'Tell (Adam's Crossing) and C34, Fysons

**In Objection:**

Mr Robin Carr *on behalf of* Cambridgeshire County Council (O12)

*who called:*

Alison Arnold C11, A Furlong Drove

Councillor Bailey, Cambridgeshire County Council C11, A Furlong Drove

Karen Champion, Cambridgeshire County Council C07, Harston No. 37  
 C11, A Furlong Drove  
 C20, Leonards  
 C25, Clayway  
 C26, Poplar Drove & C27, Willow Row Drove

Mr G Fisher C20, Leonards

Mr P Gaskin C04, No Name No. 20

Mr I Green, Cambridgeshire County Council C04, No Name No. 20  
 C07, Harston No. 37  
 C20, Leonards  
 C25, Clayway

Mr G Grimmell C04, No Name No. 20

Fern Hume C11, A Furlong Drove

Councillor W Hunt, Cambridgeshire County Council	C20, Leonards
Adrian Kendall	C11, A Furlong Drove
Andy Lonnen	C11, A Furlong Drove
Camilla Rhodes, Cambridgeshire County Council	C07, Harston No. 37 C11, A Furlong Drove C14, Eastrea Cross Drove C20, Leonards C25, Clayway C26, Poplar Drove & C27, Willow Row Drove
Mr D Robinson	C04, No Name No. 20
Mr L Smith	C04, No Name No. 20
Mr P Taylor	C04, No Name No. 20
Councillor S van de Ven, Cambridgeshire County Council	C04, No Name No. 20
Dr Buisson	<i>on behalf of</i> Cambridge Local Access Forum (O52), Strategic matters
Merrow Golden <i>who called:</i> Mr Derek de Moor	<i>Counsel on behalf of</i> The Ramblers (O26)  Strategic case
Sue Rumfitt <i>who called:</i> Jill Tuffnell	<i>on behalf of</i> The Ramblers (O26)  C07, Harston No. 37 C20, Leonards
Ms Louise Staples <i>on behalf of</i> A P Burlton (Farms) Ltd (O48), the Anthony Burlton Will Trust (O49) and the Anthony Burlton 2011 Trust (O50).	National Farmers Union (O43) C04, Meldreth, No. 20
<i>on behalf of</i> Mr White (O23)	C14, Eastrea Cross Drove
Mr White (O23)	C14, Eastrea Cross Drove

Mr R James (O45)	C04, No Name No. 20
Mr B L Taylor (O16)	C11, A Furlong Drove
Mrs Taylor	C11, A Furlong Drove
Mr Z Martin (O19)	C11, A Furlong Drove
Mr C Purllant <i>on behalf of A L Lee Farming</i> (O32)	C24, Cross Keys
Mr D Clarke (O14)	C25, Clayway
Mr M Murfitt (O36)	C26, Poplar Drove & C27, Willow Row Drove
Mr S Clewlow (O33)	C35, Ballast Pit
<b>Interested Parties:</b>	
Mr D Alderton (R5)	C28, Black Horse Drove
Mr B Price (R6)	C28, Black Horse Drove



**DOCUMENTS SUBMITTED AT THE INQUIRY****H: Documents submitted during the Inquiry by Network Rail**

NR-INQ-01 Amended Order  
NR-INQ-02 Compliance Folder  
NR-INQ-03 Opening Statement  
NR-INQ-04 Note 1 – Risk Profile/Risk Reduction  
NR-INQ-05 Note 2 – NR Crossings Costings  
NR-INQ-06 Note 3 – Rebuttal of issues raised in John Russell’s evidence for the Ramblers on other orders  
NR-INQ-07 Note 4 – C14 and C15 Note re OBJ/23 – Mr M White  
NR-INQ-08 Law Commission and Scottish Law Commission – Level Crossings  
NR-INQ-09 Cambridgeshire Stage 1 Road Safety Audit  
NR-INQ-10 Note 6 – definition of ‘suitable’ and ‘convenient’  
NR-INQ-11 Note 5 – regarding Crossing C28  
NR-INQ-12 Note 7 – regarding William and Henry Hurrell correspondence  
NR-INQ-13 Note 8 – AP Burlton/NFU Evidence on Biosecurity  
NR-INQ-14 – Deeds of Release (Little Downham Parish Council)  
NR-INQ-15 – Network Rail Note 9 C14 Eastrea Cross Drove Level Crossing  
NR-INQ-16 NR Letter dated 12.12.17 to Cheffins regarding Palmer Crossings  
NR-INQ-17 NR Note 10 – Statutory Notices displayed at Crossing C04 – No. 20  
NR-INQ-18 – DIA Information  
NR-INQ-19 NR Note 12 – Process for registration of Authorised Users  
NR-INQ-20 Email from Mr Wright to Mott Macdonald  
NR-INQ-21 – Correspondence between NR and Ely DB  
NR-INQ-22 – NR Note 13 – Revised Schedule 16  
NR-INQ-23 Photograph of Crossing C20  
NR-INQ-24 Mr Kenney photograph of Crossing C27  
NR-INQ-25 Network Rail historical correspondence  
NR-INQ-26 Road Safety Audit, volume 5, section 2  
NR-INQ-27 Defra – Advice for poultry farming  
NR-INQ-28 DMRB volume 6, section 1  
NR-INQ-29 Joint statement relating to the side-agreement on behalf of CCC and NR  
NR-INQ-30 NR Note 14 – Information requested by CCC from NR at Inquiry  
NR-INQ-31 NR Note in response to EA letter regarding Draft Protective Provisions  
NR-INQ-32 NR Note 15 – Planning Policy Note  
NR-INQ-33 Rule 10(6) Request for Planning Permission  
NR-INQ-34 NR response regarding traffic census C26 & C27, Poplar Drove and Willow Row/Road  
NR-INQ-35 NR further details regarding Note 2 – Crossings Costing (NR-INQ-05)  
NR-INQ-36 NR additional information regarding NR-INQ-35 (NR-INQ-05)  
NR-INQ-36-a Estimated Cost per Crossing  
NR-INA-36-b DU Budget Rates  
NR-INQ-37 NR explanation regarding Crossing C24, Cross Keys and Route Alignments  
NR-INQ-38 Final Order 15.02.18  
NR-INQ-39 Final Note on Filled Up Order 20.02.18  
NR-INQ-40 – Amended Order Plans  
NR-INQ-41 – Amended Sheet 10 (unofficial version)  
NR-INQ-42 Network Rail Closing Statement  
NR-INQ-43 – Email regarding common land

**I: Documents Submitted by Interested Parties during Inquiry****OBJ-06 – The Whittlesey Charity**

OBJ-06-INQ-01 – Letter of Objection to Secretary of State dated 24-11-17

**OBJ-12 – Cambridgeshire County Council**

OBJ-12-INQ-01 CCC Opening Statement

OBJ-12-INQ-02 Summary of withdrawn objections

OBJ-12-INQ-03 C24 Cross Keys

OBJ-12-INQ-04 C33 Jack O'Tell, C34 Fysons (and C02 Nairns)

OBJ-12-INQ-04a – C33 Jack O'Tell, C34 Fysons (and C02 Nairns) – revised

OBJ-12-INQ-05 C16 Prickwillow 1 and C17 Prickwillow 2 and C29 Cassells

OBJ-12-INQ-06 C28 Black Horse Drove

OBJ-12-INQ-07 C31 Littleport Station

OBJ-12-INQ-08 – Closing Statement

OBJ-12-INQ-09 – Appendix to Closing Statement – Rights of Way Circular

OBJ-12-INQ-10 – Final Filled Order and Plan

OBJ-12-INQ-11 – Amended Order plans

OBJ-12-INQ-12 – Letter re C28 Black Horse Drove, 27 November 2017

OBJ-12-INQ-13 – Copies from Definitive Map

**OBJ-14 – Heartbeat Health Walks**

OBJ-14-INQ-01 – Statement submitted by David Clarke, Walk Leader

**OBJ-15 – FC Palmer & Sons and their Subsidiary Companies**

OBJ-15-INQ-01 – Summary of Position dated 08.12.17

OBJ-15-INQ-02 – Plan of Inspection Route

**OBJ-16 – Mr & Mrs Taylor**

OBJ-16-INQ-01 – Evidence on Crossing C11

**OBJ-19 – Mr Z Martin**

OBJ-19-INQ-01 – Evidence on Crossing C11

**OBJ-25 – Robin Clark *on behalf of* Brigadier William Hurrell & Henry Hurrell**

OBJ-25-INQ-01 – Liaison information

**OBJ-26 – The Ramblers Association**

OBJ-26-INQ-01 Opening Statement

OBJ-26-INQ-02 Safety at Level Crossings Report – House of Commons Transport Committee – March 2014

OBJ-26-INQ-03 National Planning Policy Framework

OBJ-26-INQ-04 DfT Cycling and Walking Strategy

OBJ-26-INQ-05 – Definition of 'suitable' and 'convenient'

OBJ-26-INQ-06 – withdrawal of objection to Crossing C24-Cross Keys

OBJ-26-INQ-07 – withdrawal of objection to Crossing C29-Cassells Crossing

OBJ-26-INQ-08 – Oxford English Dictionary Definition of 'suitable' and 'convenient'

OBJ-26-INQ-09 – Note on behalf of RA on the DIA Information (NR-INQ-18)

OBJ-26-INQ-10 – Closing Statement

OBJ-26-INQ-11 – Documents relating to Mr Russell's evidence

**OBJ-33 – Mr Clewlow**

OBJ-33-INQ-01 – supporting information

**OBJ-34 – Messrs Fountain**

OBJ-34-INQ-01 – Status Update – 27.11.17

**OBJ-35 – Messrs Brown**

OBJ-35-INQ-01 – Status Update – 27.11.17

**OBJ-43 – National Farmers Union**

OBJ-43-INQ-01 NFU – Opening Statement

OBJ-43-INQ-02 NFU – Closing Statement

**OBJ-45 – Dr Roger James**

OBJ-45-INQ-01 – Visual Evidence

**OBJ-52 – Cambridgeshire Local Access Forum**

OBJ-52-INQ-01 CLAF – Opening Statement

**REP-4 – South Yorkshire Pension Authority**

REP-4-INQ-01 Objection letter

REP-4-INQ-02 Statement of case and accompanying documents

**REP-6 – Mr Bill Price**

REP-6-INQ-01 Representation

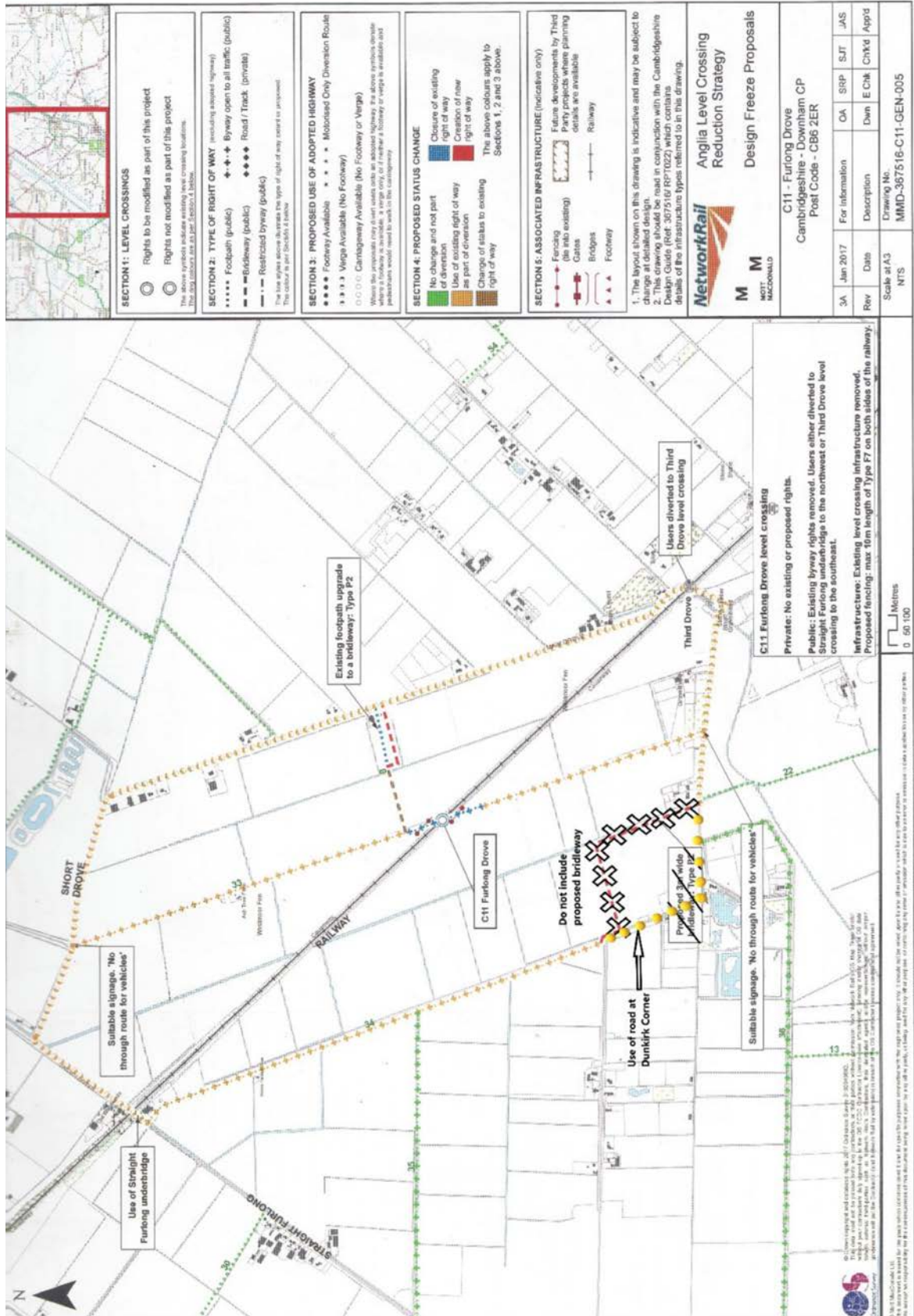
**ABBREVIATIONS AND GLOSSARY**

2000 Act	Countryside and Rights of Way Act 2000
2006 Rules	The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466
AHB	Automatic half barriers
ALCRM	All Level Crossing Risk Model
ALCRS	Anglia Level Crossing Reduction Strategy
ATC	Automatic Traffic Count
BK	Bruton Knowles
BMS	Business Management System
BOAT	Byway Open to All Traffic
CCC	Cambridgeshire County Council
CEM	Contractor's Engineering Manager
CEMP	Construction Environmental Management Plan
CHWBS	Cambridgeshire Health and Well Being Strategy
CLAF	Cambridge Local Access Forum
CP	Control Period
CPMWP	Cambridgeshire and Peterborough Minerals and Waste Plan (2011)
CRD	Client Requirements Document
DC	District Council
Defra	Department for the Environment Food and Rural Affairs
DfT	Department for Transport
DIA	Diversity Impact Assessment
DMS	Definitive Map and Statement
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Stewardship
FBT	Farm Business Tenancy
FCPS	FC Palmer & Sons
FLUG	Fen Line Users Group
FOI	Freedom of Information (Act request)
FPS	Footpath with stiles
GRIP	Governance for Railway Investment Projects
The Guide	A Guide to Transport and Works Act Procedures, 2006
GP	Guiding principles, CCC
HA80	Highways Act 1980
HBHW	Heartbeat Health Walks
HGV	Heavy Goods Vehicle
HIA	Health Impact Assessment
HIMAP	Highway Infrastructure Asset Management Plan
IDB	Internal Drainage Board
LAF	Local Access Forum
LCRS	Level Crossing Reduction Strategy
LPA	Local Planning Authority

LTP	Local Transport Plan.
MM	Mott MacDonald
MRUG	Meldreth Rail User Group
MSL	Miniature Stop Lights
NE	Natural England
NFU	National Farmers Union
NHS	National Health Service
NMU	Non-motorised user
NPPF	The National Planning Policy Framework
NPSNN	National Policy Statement for National Networks
NR	Network Rail Infrastructure Limited.
NSIP	Nationally Significant Infrastructure Project
Order	The Network Rail (Cambridgeshire Level Crossing Reduction) Order 201[X].
ORR	Office of Rail and Road
PMW	Precautionary Method of Works
PROW	Public Rights of Way
PSED	Public Sector Equality Duty
PSV	Public Service Vehicle
RAIB	Rail Accident Investigation Branch
ROWIP	Rights of Way Improvement Plan
RRD	Route Requirements Document
RSA	Road Safety Audit
Scheme	Network Rail's Anglia Level Crossing Reduction Strategy (Cambridge)
Secretary of State	Secretary of State for Transport
SLL	Stop, Look, Listen signs
SOA	Statement of Action, CCC
SOM	Statement of Matters, provided by the Secretary of State
SYPA	South Yorkshire Pensions Authority
TCPA	The Town and Country Planning Act 1990
TRO	Traffic Regulation Order
TSM	Traffic Signs Manual
TWA	Transport and Works Act 1992
TWAO	Transport and Works Act Order
UCR	Unclassified County Road
UWC	User Worked Crossing
UWCM	User Worked Crossing with Miniature stoplights
UWCT	User Worked Crossing with Telephone
WSI	Written Scheme of Investigation

**ANNEX 1**

Proposed changes to C11 if decided to include without the southern brideway



## ANNEX 2

This indicates the conditions to be implemented if the Secretary of State determines to include all crossings in the Order

### 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 sub-paragraph (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.*