



The Planning Inspectorate

Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 18 March 2020

**TRANSPORT AND WORKS ACT 1992
TOWN AND COUNTRY PLANNING ACT 1990
ACQUISITION OF LAND ACT 1981**

**THE NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER
201[X]**

AND

**REQUEST FOR A DIRECTION UNDER SECTION 90(2A) OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

Inquiry opened on 13 February 2018

File Ref: DPI/V3500/17/13

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CASE DETAILS

Purpose

- The purpose of the *Network Rail (Suffolk Level Crossing Reduction) Order 201[X]* (the Order) is to close or, in one case, to downgrade, a number of level crossings as a matter ancillary to a transport system and the works being undertaken relate to the closure of certain level crossings, re-designation of certain footpaths, bridleways or byways open to all traffic and creation of new rights of way. The Order would also permit Network Rail Infrastructure Limited (NR) to occupy land temporarily and to acquire easements of other rights over land in connection with the construction of the scheduled and authorised works to be authorised by the Order.¹

The Network Rail (Suffolk Level Crossing Reduction) Order 201[X]

- The Order is drafted under sections 1 and 5 of the Transport and Works Act 1992. The application for the Order was made to the Secretary of State for Transport on 24 March 2017.

Summary of Recommendation: The Order, subject to modifications, should be made.

Request for Deemed Planning Permission

- A request was made on 24 March 2017 for a Direction granting Deemed Planning Permission, subject to conditions, for the works that are the subject of the Order.

Summary of Recommendation: A Direction granting Deemed Planning Permission be given.

1. PREAMBLE

¹ NR4 para 2.

1.1. **The Inquiry and site visits**

- 1.1.1. I have been appointed by the Secretary of State for Transport (the Secretary of State) to conduct an Inquiry to hear representations regarding an application by Network Rail to the Secretary of State to make an Order and give a Direction in respect of Deemed Planning Permission, all as described in the case details above.
- 1.1.2. A Pre-Inquiry meeting was held on 1 November 2017, the minutes of which were issued to the parties and were made generally available through the Inquiry website. The Inquiry opened on 13 February 2018 and sat, under the terms of the *Transport and Works Act (Inquiries Procedure) Rules 2004* (Inquiries Rules), as follows:
- Ashlar House, Bury St Edmunds: 13-16 & 20-22 February; 15-16 March; 30 April; and, 3-4 May 2018;
 - Town Hall, Ipswich: 27-28 February; 1-2 March; and, 22-25 May 2018; and,
 - Memorial Hall, Newmarket: 13-14 March; 19-20 April; and, 1-2 May 2018.
- 1.1.3. The Programme Officers for the Inquiry were Joanna Vincent and Brenda Taplin (Persona Associates).
- 1.1.4. Before and during the Inquiry, I undertook unaccompanied visits to various locations which were the subject of representations. I carried out accompanied site visits on 15-17 May 2018.
- ## 1.2. **Purpose of the Order**
- 1.2.1. The Order as drafted would allow Network Rail to close 23 level crossings and downgrade 1 other level crossing². In connection with those powers the Order includes for the following works³:
- 1) Removal of level crossing assets and the installation of boundary fencing;
 - 2) Creation of Public Rights of Way (PRoW) as diversionary routes;
 - 3) Improvement of existing PRoWs to provide safe and accessible routes;
 - 4) Provision of footbridges to carry PRoW over watercourses;
 - 5) Provision of steps, fencing, mounting blocks, signage and other highway infrastructure;
- 1.2.2. The Order would also permit compulsory acquisition of rights over third party land for the proposed works and ancillary purposes, including: worksites; temporary use of land in connection with the authorised

² NR2 Schedule 1 & NR26 Figure 11-Level crossing location map.

³ NR26 para 126.

scheme; and, the extinction and creation of private rights. It also contains provisions associated with the operation and use of the railway; temporary and permanent stopping up of highways; and, other provisions relating to streets.⁴

- 1.2.3. The applicant's Statement of Aims under Rule 10(2)(c) reports that closing or modifying the level crossings subject of the Order will bring the following benefits⁵:
- 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; and,
 - e. Facilitating capacity and line speed increases on the network in the future.

1.3. **Objectors to the Order, supporters and others**

- 1.3.1. Upon receipt of the Order application, the Department for Transport (DfT) invited representations from interested parties. In response, it received 68 representations in the period March to May (inclusive): 62 objecting to the scheme (OBJ/1-62) and 3 supporting it (SUPP/1-3) as well as 3 other representations (REP/1-3).
- 1.3.2. Following the pre-Inquiry meeting, in the period from December 2017 to February 2018 (inclusive), 59 more objections were received (OBJ/63-121). Additionally, 3 objections were received towards the end of the Inquiry.⁶
- 1.3.3. During the course of the Inquiry, 5 parties withdrew their objections (OBJ/30, 31, 54, 46 and 53). Whilst Bacton United also submitted a letter withdrawing its objections⁷, subsequent correspondence raised concerns, which have been taken into account⁸.

1.4. **The Main Grounds of Objection**

- 1.4.1. The main grounds of objection relate to the suitability and convenience of alternative routes proposed by Network Rail as replacements for the existing level crossing routes which would be closed under the terms of the Order.

1.5. **Statement of Matters**

⁴ NR26 paras 127-128.

⁵ NR4 para 13.

⁶ OP/INQ/95, 98 and 101.

⁷ NR/INQ/85.

⁸ OP/INQ/63

- 1.5.1. The Secretary of State issued a Statement of Matters (SoM) dated August 2017 pursuant to Rule 7(6) of the *Inquiries Rules*. This sets out the matters about which the Secretary of State wishes to be informed for the purposes of consideration of the draft Order and the request for a Direction in respect of Deemed Planning Permission. The matters listed provide the basis for my 'Inspector's Conclusions' presented later in this Report. The matters are:
- 1) The aims of and the need for the proposed Network Rail (Suffolk Level Crossing Reduction) Order Scheme (the scheme);
 - 2) The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme;
 - 3) The extent to which the proposals in the Order are consistent with the *National Planning Policy Framework* (the Framework), national transport policy, and local transport, environmental and planning policies;
 - 4) In relation to each of the level crossings to be closed, the 1 level crossing to be re-designated, and the proposed diversionary routes to be created:
 - 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;
 - b) impacts on other users;
 - c) impacts on flood risk and drainage;
 - d) impacts on the landscape and agricultural land;
 - e) any other environmental impacts including noise and health; and,
 - f) the suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.
 - 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 Order or other measures to safeguard the operations of utility providers and statutory undertakers.
 - 6) Having regard to the criteria for justifying compulsory purchase orders in paragraphs 12 to 15 of the *Department for Communities and Local Government 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);
 - a) whether there is a compelling case in the public interest for conferring on Network Rail powers to compulsorily 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 Network Rail in order to secure satisfactory implementation of the scheme.
- 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);
- 8) Network Rail's proposals for funding the scheme;
- 9) Whether statutory procedural requirements have been complied with; and,
- 10) Any other relevant matters which may be raised at the Inquiry.

1.6. **Legal and Procedural matters**

Whether it is appropriate to use the Transport and Works Act 1992 (TWA) procedure

- 1.6.1. The question as to whether it is appropriate to use the TWA procedure in this case is a matter of disagreement between Network Rail and the Ramblers' Association, in relation to which both parties have made submissions, which are recorded below as part of the parties' cases. The Inquiry continued without prejudice to the decision which might later be made on the matter. Whilst I give my view in my conclusions, it is a legal matter upon which the Secretary of State may wish to take advice.

S22-Weatherby level crossing-whether public right of way exists there

- 1.6.2. At the Inquiry, a dispute arose as to whether there is a public right of way over S22. Network Rail's position is that there is not a public right of way and a number of objectors took a contrary view. I issued a written Ruling⁹ setting out how I would proceed, having had regard to written submissions made by Suffolk County Council (SCC), as the Surveying Authority, Network Rail and the Ramblers' Association on the subject of whether this Inquiry was an appropriate forum to determine if public rights of way exist over S22¹⁰.

- 1.6.3. In summary, I confirmed that I shared the view of SCC, Network Rail and the Ramblers' Association; the Inquiry as constituted would not be the appropriate forum to determine whether public rights of way exist over S22. I stated that I would proceed on the following basis:

- I would include in my report the main points of the submissions made at the Inquiry in relation to the status of the crossing. I would not draw a conclusion on the matter of whether public rights of way exist over S22.

⁹ INSP/3- Inquiry Note 1-Whether this Inquiry is an appropriate forum to determine if public rights of way exist over Weatherby level crossing (S22), 27 April 2018

¹⁰ OP/INQ/31, 33, 43, 44, NR/INQ/65.

- I would include in my report to the main points of the submissions made at the Inquiry as regards whether the diversionary route identified by Network Rail would constitute a 'suitable and convenient' alternative and would conclude on that matter. If it would not, I would recommend that S22 be removed from the Order, this being an approach supported by both SCC and Network Rail.

I consider that this approach would be unlikely to prejudice the interests of any party.

Inquiry programming

- 1.6.4. In submissions prior to the Inquiry, the Ramblers' Association suggested that the Inquiry should be programmed in a manner that allows consideration of each individual crossing, including time for those objectors who wish to appear to do so [8.2.40-42]. I am content that this was done. Furthermore, following discussion at the Pre-Inquiry Meeting, the Inquiry was held in a number of different venues around the County in order to ensure, as far as practical, that crossing specific sessions were reasonably accessible to the associated communities. For example, a number of sessions were held in Newmarket dealing with the S22-Weatherby crossing.

Revised National Planning Policy Framework

- 1.6.5. At the time of the Inquiry the *National Planning Policy Framework, March 2012*, was extant. However, after the close of the Inquiry, it was subsequently replaced by the *National Planning Policy Framework, July 2018*. This change was drawn to the attention of interested parties on 11 September 2018 and they were given an opportunity to comment on whether any associated revisions were relevant to their case. Responses were received from OBJ/36, OBJ/32 and Network Rail¹¹. A further update to the *National Planning Policy Framework* was issued in February 2019. In my judgement, there are not differences between the July 2018 and the February 2019 versions of the document which are material to the findings in this case. Against this background, I consider that it would not prejudice the interest of anyone to base my findings on the *National Planning Policy Framework, February 2019* (the Framework) without further consultation and therefore, I have done so.

Compulsory Purchase process and The Crichel Down Rules

- 1.6.6. *SoM6 makes reference to paragraphs 12-15 of the Department for Communities and Local Government 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 (2015)*. Whilst this document has been replaced by *The Ministry of Housing Communities & Local Government's Guidance on Compulsory purchase process and The Crichel Down Rules (2018)*, the content of paragraphs 12-15 remains the same. I consider that it would not prejudice the interest of anyone to

¹¹ OP/INQ/118, NR/INQ/144.

refer to the more recent document in relation to those paragraphs and therefore, I have done so.

West Suffolk Council

- 1.6.7. On the 1 April 2019, Forest Heath District Council and St Edmundsbury Borough Council, who were individually represented at the Inquiry, merged to form West Suffolk Council. The gist of each former Council's case is reported separately below. However, where reference is made to local planning authorities in the preamble to proposed planning conditions, at the end of this report, reference is now made to West Suffolk Council, rather than to Forest Heath District Council and St Edmundsbury Borough Council.

Costs applications

- 1.6.8. Prior to the close of the Inquiry, costs applications were made against Network Rail by OBJ/60, OBJ/26 and OBJ/42. In each case, Network Rail were provided with an opportunity to respond, before the applicant had a final say. All the submissions were made in writing. These applications are the subject of a separate Costs Report to the Secretary of State.

1.7. Scope of this Report

- 1.7.1. The purpose of this report is to allow the Secretary of State to come to an informed view on whether it would be in the public interest to make the Order and give a Direction in respect of Deemed Planning Permission. This report contains a brief description of the facilities subject of the Order, the key points of the evidence presented and my conclusions and recommendations. Lists of Inquiry appearances, documents, abbreviations used, and recommended conditions are attached as appendices. Proofs of evidence were added to at the Inquiry through written and oral evidence. Italic text is used within the summaries of cases for my factual comments to assist the reader. References in the text given in square brackets, [], are to paragraphs elsewhere in the Report.

2. THE LEVEL CROSSINGS

- 2.1. The at-grade, railway level crossings subject of the Order as originally drafted are located across the county¹²: 9 on the Cambridge to Ipswich railway line; and, 15 on the Liverpool Street to Norwich via Ipswich railway line:

- 1) S01-Sea Wall;
- 2) S02-Brantham High Bridge;
- 3) S03-Buxton Wood;
- 4) S04-Island;
- 5) S05-Pannington Hall (now withdrawn by Network Rail);
- 6) S07-Broomfield (now withdrawn by Network Rail);

¹² NR26 page 34 Figure 11.

- 7) S08-Stacpool;
- 8) S11-Leggetts;
- 9) S12-Gooderhams;
- 10) S13-Fords Green;
- 11) S16-Gislingham;
- 12) S17-Paynes;
- 13) S18-Cowpasture Lane;
- 14) S21-Abbotts (Mellis);
- 15) S22-Weatherby;
- 16) S23-Higham;
- 17) S24-Higham Ground Frame;
- 18) S25-Catishall;
- 19) S27-Barrell's;
- 20) S28-Grove Farm;
- 21) S29-Hawk End Lane;
- 22) S30-Lords No. 29;
- 23) S31-Mutton Hall; and,
- 24) S69-Bacton.

3. THE CASE FOR NETWORK RAIL INFRASTRUCTURE LIMITED (Network Rail)

3.1. *Use of the TWA procedure*

- 3.1.1. Network Rail considers that it is perhaps helpful to address at this point the contentions raised by the Ramblers' Association that it is inappropriate for Network Rail to be seeking closure of level crossings by means of an Order under the Transport and Works Act 1992 (TWA) and/or that it is somehow seeking to 'bypass' specific statutory regimes which provide for closure of level crossings.
- 3.1.2. This Order is pursued under section 1 of the Act, the matters contained within the draft Order being matters ancillary to the operation of a transport network: specifically, the efficient and safe operation of the railway network within the Anglia region.
- 3.1.3. Reducing the number of level crossings across the network is a key, strategic priority for Network Rail, both generally and across the Anglia region. Every level crossing represents a constraint on the operational network, an effect which is both individual and cumulative. Those constraints both impact on the operational efficiency and resilience of the existing network and provide barriers to future opportunities to enhance the capacity and efficiency of the network. That is in addition to the 'safety risk' which each crossing introduces to the railway system, both in terms of risk to users of the level crossing, and risks to the operational railway.
- 3.1.4. Network Rail considers it is simply unarguable, therefore, that an Order, the effect of which would be to reduce those constraints and thus enhance the operational efficiency and resilience of the network is not a

'matter ancillary to the operation of a transport network', within the meaning of section 1 of the Act.

3.1.5. Network Rail says that clearly, the reduction of risk, which is not limited to safety of users of the crossing, is a material objective, and benefit, which would be realised by the Order. It is not, however, the 'key' justification for the Order.

3.1.6. Nor, in Network Rail's view, could the Order proposals be pursued through the other statutory regimes referred to by the Ramblers' Association in its Legal Submissions: specifically, the provisions contained in Part VIII of the Highways Act 1980 (HA 1980). Network Rail considers those provisions, briefly, below.

3.1.7. Firstly, section 118A of the Highways Act 1980. This provides (so far as material for present purposes) that:

'(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.

(4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are 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.'

3.1.8. Network Rail considers that this procedure may only be used, therefore, where it appears to the highway authority that the crossing should be closed on the grounds of safety of those using the PRoW. That is not the basis on which this Order is pursued. Nor could this power be used to stop up a PRoW for the objectives pursued by this Order: the power conferred by section 118A can only be used in considering the safety of users of the PRoW, not, 'risk' to the railway, or the current, or future, operational needs of the railway. It is also in the discretion of the highway authority whether such an order should be pursued.

3.1.9. Secondly, section 119A of the Highways Act 1980. This provides that:

'(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).

...

(4) The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are 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.'

- 3.1.10. Network Rail indicates that the same problems apply as with section 118A. Moreover, although it provides for a PRow to be diverted onto other land, nothing in the Act would empower Network Rail to acquire such land or rights as might be necessary to effect the proposed diversion (for example, if rights of access were required to remove the level crossing infrastructure, or construct works to facilitate the proposed diversion) or grant planning permission for any physical works, such as construction of steps or ramps.
- 3.1.11. Thirdly, in respect of section 116 of the Highways Act 1980, whilst this power extends to roads (unlike s.118A & s.119A) it is even more limited as to the basis on which an order can be made. Section 116 provides as follows:
- '(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section—*
- (a) is unnecessary, or*
- (b) can be diverted so as to make it nearer or more commodious to the public, the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.'*
- 3.1.12. The focus, in section 116(1) is thus on whether the PRow is 'unnecessary' for the highway user, or whether the diversion would, essentially, be 'more commodious' for those using the highway; the focus is not on the needs of (or risks to) the operational railway.
- 3.1.13. Network Rail maintains therefore, that none of the other statutory procedures which the Ramblers' Association contends should be used instead of the TWA Order (TWAO) procedure could, in fact, be used to achieve the strategic objectives which underlie the current application. The proposals contained within this Order are simply not proposals which could be dealt with under existing, statutory procedures.
- 3.1.14. Nor is the use of the TWAO procedure to effect closure, or amend the status, of level crossing unprecedented: see, for example, *The Network Rail (Abbots Ripton Level Crossing) Order 2017/1074*, *The Network Rail (Northumberland Park Level Crossing and Coppermill Lane Level Crossing Closure) Order 2017*, *The Chiltern Railways (Bicester to Oxford*

*Improvements) Order 2012/2679; and, The Railtrack (Ammanford Level Crossings) Order 1997*¹³. The principle of using TWAO to effect level crossing closures is thus both well precedented and accepted by the Secretary of State for Transport.

- 3.1.15. Network Rail considers that this Inquiry may, therefore, properly proceed on the basis that the TWAO procedure is the appropriate procedure for Network Rail to use to seek to reduce the level crossing estate across the Anglia region.

The tests to be applied

- 3.1.16. Network Rail indicates that in considering the proposals for each crossing, the test which needs to be considered is that set out in section 5(6) of the TWA, namely, whether the Secretary of State is satisfied (a) that an alternative right of way has been or will be provided; or (b) that no alternative right of way is required.

- 3.1.17. The Act is silent as to any further qualifications that attach to section 5(6)(a). The TWA guidance¹⁴ provides, in Annex 2, that '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.' It should be noted that these words are being used in the context of guidance and are not a statutory test.

- 3.1.18. It is Network Rail's position that section 5(6), read with the TWA Guidance, requires the Secretary of State to be satisfied that the proposed alternative is suitable and convenient having regard to the purpose served by the route to be extinguished, and use made of it by existing users – not any person who might be legally entitled to use the route, or who might, theoretically, do so in the future (e.g. following construction of a new development in the area).

- 3.1.19. Network Rail would highlight, in particular:

- a) Section 5(6) anticipates that an alternative may not be required at all. Where an alternative is found to be required, the statute does not say anything about the form of that alternative;
- b) The language used by the Secretary of State in the TWA guidance focusses on *existing* users of the public right of way. That language indicates, also, that the Secretary of State is not seeking *enhancements* to the PRow network in applying section 5(6);
- c) Importantly, the guidance does not invite a comparative exercise between the extinguished right of way and the proposed alternative (if required). It can clearly be differentiated, therefore, from the language used in, e.g. 119 of the Highways Act 1980;

¹³ NR/INQ/63.

¹⁴ DfT 'A Guide to TWA Procedures' (June 2006)

- d) Similarly, the guidance does not suggest any overarching requirement to take account of the “public enjoyment of the footpath as a whole”, unlike the test in section 119 of the Highways Act 1980 (HA 1980);
 - e) A closer analogy (although, the test is again not the same as section 5(6)) is that contained in section 14(6) HA 1980, where “another reasonably convenient route” is required where side roads may be stopped up for trunk road developments; or section 18(6) HA 1980 where such a route is required where side roads may be stopped up for a “special road” (i.e. a motorway); or where footpaths are temporarily diverted for dangerous works under section 135A HA 1980.
- 3.1.20. Network Rail states that there is simply no proper basis for importing the additional tests which the Ramblers’ Association contends should be applied, reading across from section 118A and section 119A of the Highways Act 1980.
- 3.1.21. If the Inspector (and, subsequently, the Secretary of State) is satisfied that Network Rail has made out its strategic case for the Order, then it follows that the only basis on which the Order could either not be confirmed, or confirmed with modifications (removing specific crossings from the Order) is if they consider either that an alternative route has not been provided but is required (section 5(6)(b)) or that the alternative route is not “suitable and convenient”. There is simply no basis for reading into the TWA a further requirement that the Inspector/Secretary of State must be satisfied that it is “expedient” to close each individual crossing having regard to all the circumstances including those specified in section 118A(4) or section 119A(4) of the HA 1980. Not least, as if that was what Parliament had intended, this would have been written into section 5(6), or otherwise made clear that the amendments to the HA 1980, made by section 47 & Schedule 2 of the 1992 Act, applied equally when considering extinguishment of a PRow under section 5(6).
- 3.1.22. Network Rail would highlight, at this point, that where an alternative route is being provided, Article 13(3) of the draft Order¹⁵ provides that the route across the level crossing is not to be closed (and relevant PRows extinguished) *“until, in respect of each level crossing in that Part [Part 1 of Schedule 2], the new highway specified in column (4) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 15 (creation and maintenance of new highway) and is open for use.”*
- 3.1.23. Mr Kenning explains in his evidence how Network Rail’s consideration of whether an alternative route is “required” has been strongly informed by the views of the relevant highways authorities, having regard (inter alia)

¹⁵ NR2.

to the wider PRow network in the area and their respective policies regarding the same. Ms Tilbrook has explained why the diversion proposed in respect of each crossings is suitable and convenient. She has also discussed the comparative merits of alternatives considered by Network Rail during the development of the Order; those proposed by others during development of the Order and/or proposed by an objector to the Order. Ms Tilbrook has also addressed concerns that have been raised with safety of users on the proposed alternative routes, by reference to the Road Safety Audits (RSAs) which have been carried out where the proposed diversion involves the use of existing roads, and has explained how the needs of all existing users have been taken into account in selecting the proposed diversionary route.

3.2. **Statement of Matters 1 (SoM1)- The aims of and the need for the proposed Order scheme** (the scheme or the Order scheme)

3.2.1. Network Rail owns and operates the rail infrastructure of Great Britain. It is responsible for the maintenance, repair, renewal and safe operation, and has a duty to enhance and improve the railway network in operational terms. Part A1 (Network Management) under Part III of the Licence sets out Network Rail's responsibilities in respect of management of the network. The material sections are set out at paragraph 4.9 of Mark Brunnen's Proof of Evidence (PoE)(NR/27-1), and include the following provisions:

'1 Network Management

Purpose

1.1 The purpose is to secure:

- (a) The operation and maintenance of the network;*
- (b) The renewal and replacement of the network; and*
- (c) The improvement, enhancement and development of the network,*

In each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

- (i) the quality and capability of the network; and*
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.'*

'General Duty

1.2 The licence holder shall achieve the purpose in condition 1.1 to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.'

- 3.2.2. By this application, Network Rail originally sought powers to close or downgrade rights over 24¹⁶ level crossings within Suffolk, together with associated powers, (including the acquisition of rights over land, and, to the extent necessary, deemed planning permission) to allow for the provision of diversionary routes for existing users of those crossings. The application is made under section 1 (read with section 5) of the *Transport and Works Act 1992* (TWA), the matters contained within the draft Order being matters ancillary to the operation of a transport network: specifically, the operation of the railway within the Anglia region.
- 3.2.3. The case for pursuing this Order is a strategic one and is, essentially, threefold:
- a) Operational efficiency of the network (including increasing resilience of the current railway, and removing constraints with a view to future enhancements);
 - b) Safety of rail users and of those interacting with the railway by reason of the crossing points over the railway; and
 - c) Efficient use of public funds in accordance with the obligations imposed on Network Rail, as arms-length Government Body, under "Managing Public Money".
- 3.2.4. Specifically, Network Rail now seeks powers to:
- a) Close 16¹⁷ level crossings, following provision of a new right of way on a diversionary route;
 - b) Close 3 level crossings without provision of a new route, the existing highway and/or PRow network providing a sufficient diversionary route and/or no diversionary route being required¹⁸;
 - c) Extinguish private rights of way over 1 crossing¹⁹;
 - d) Downgrade the rights of way over 1 crossing, from BOAT (currently subject to a Prohibition of Driving Order) to bridleway²⁰;
 - e) Upgrade one footpath to bridleway²¹;

¹⁶ Originally 24, S05 Pannington Hall has been withdrawn from the draft Order since the application was made. At the end of the Inquiry, Network Rail proposed the withdrawal of S07 Broomfield.

¹⁷ Originally 18, S05 Pannington Hall has been withdrawn from the draft Order since the application was made. At the end of the Inquiry, Network Rail proposed the withdrawal of S07 Broomfield.

¹⁸ S11, S23 and S24.

¹⁹ S21 Abbots (Mellis)

²⁰ S18 Cowpasture Lane

²¹ At S25, Cattishall. (This is a change to the draft Order, reflected in the amended draft Order submitted on the first day of the Inquiry, and responds to the point raised in Suffolk County Council's objection (discussed at paragraph 8 of Mr Woodin's PoE for S25 Cattishall (OBJ/29/W2/S25) that the section immediately to the north of P022 shown on the original Order plans is already recorded highway).

- f) Close one crossing not subject to public right of way or known private rights of way, use being permissive only;²²
- g) Carry out works necessary to facilitate the proposed closures and creations of new public rights of way (a request for planning permission for necessary works has been made pursuant to rule 10(6) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006); and
- h) Temporarily use and/or take rights of access over land to facilitate the exercise of powers within the draft Order.

3.2.5. The benefits sought to be achieved, through the Order, are set out in more detail in Network Rail's Statement of Aims (NR4), namely:

- a) Creating a more efficient and reliable railway;
- b) Facilitating capacity and line speed increases on the network in the future;
- c) Improving the safety of level crossing users, railway staff and passengers;
- d) Reducing delays to trains, pedestrians and other highway users; and,
- e) Reducing the ongoing operating and maintenance costs of the railway.

3.2.6. Network Rail identifies that the case for the Order, or for closure of individual crossings contained within it, is not based on any one of those objectives individually, but on a combination of those factors. It is critical to understand that level crossings are but one part of the wider railway system. The proposals contained within the Order must be considered in that context. As Dr Algaard stressed in examination in chief (XIC),²³ Network Rail "*do[es] not consider crossings in singularity but at a systemic level ... The railway is a system. Looking at operating a safe, reliable railway, need to look at how it will impact the system, not an individual level crossing.*"

3.2.7. Network Rail confirms that the crossings included within the Order have not been selected based on the specific risk associated with that crossing;²⁴ a specific enhancement scheme being 'held back' by the presence of that crossing; or the costs associated with maintaining that crossing. The case for this Order turns on benefits to the railway which would result from reducing the number of at-grade level crossings across the Anglia route:

²² S22 Weatherby

²³ Day 2 of the Inquiry

²⁴ As set out at para 8.24 of Mark Brunnen's PoE, ALCRM was not used to select or prioritise crossings for inclusion in the Order.

- a) enabling Network Rail to focus its resources on those at-grade crossings which cannot be closed by diversion;²⁵
 - b) reducing constraints on future enhancement schemes which could impact negatively on the business case for that enhancement (and thus render it less likely to come forward);²⁶ and,
 - c) improving the reliability, and resilience, of the network.
- 3.2.8. As Dr Algaard confirmed in cross-examination (XXC),²⁷ the removal of each and every level crossing will provide a safety benefit, remove a maintenance obligation, reduce costs, will make the route safer and more reliable, and facilitate future enhancement.
- 3.2.9. Network Rail acknowledges that that analysis applies to the removal of any level crossing on the network – not just those included within the Order – and that the consideration of whether the Order, as drafted, should be recommended for approval is not limited to those matters alone. It is acknowledged that there is a need for a ‘balancing act’.²⁸ That is where consideration of whether the proposed alternative route is “suitable and convenient” comes into play (i.e. the test in section 5(6) TWA). Network Rail does not have to establish a ‘case’ for closure of an individual crossing: that is inextricably part and parcel of the strategic case for the Order as a whole.
- 3.2.10. Network Rail’s position remains, as set out at para 48 of its Opening Submissions that, if the Inspector (and, subsequently, the Secretary of State) is satisfied that Network Rail has made out its strategic case for the Order, then it follows that the only basis on which the Order could either not be confirmed, or confirmed with modifications (removing specific crossings from the Order) is if the Inspector considers either that an alternative route has not been provided but is required (section 5(6)(b)) or that the alternative route is not ‘suitable and convenient’.

Risk and safety

- 3.2.11. Network Rail indicates that all level crossings carry risk. Level crossings are the largest single contributor to train accident risk on the railway network.²⁹ They present a risk to those traversing the crossing, and those driving or riding on trains. Mr Brunnen’s evidence illustrates these risks in detail, setting out (inter alia) details of fatalities at level crossings from 2005-2017;³⁰ a ‘worsening trend’ of near-miss

²⁵ As Mark Brunnen explained in XIC on Day 1, Network Rail must take the opportunity to close crossings where opportunities exist to rationalise the crossing, which “allows us to direct resources at level crossings that most need them because there is no opportunity” for closure, and “instead of spending money on crossings which could reasonably be rationalised we can spend on those which cannot”

²⁶ As discussed by Dr Algaard in XIC (Day 2)

²⁷ Days 2 and 3, in response to questions from Ms Golden

²⁸ Dr Algaard in XXC, Day 2

²⁹ Mark Brunnen PoE para 7.2

³⁰ Revised Appendix 2 to his Proof of Evidence (NR/INQ/46)

incidents;³¹ and risks arising from user-behaviour, with particular reference to the risks arising from familiarity and distractions.³²

- 3.2.12. It goes without saying that when those risks materialise, they have appalling consequences. Dr Algaard³³ and Mr Prest³⁴ both discussed the impacts that arise from such events for those unfortunate enough to be involved in, or witnessing, them (echoed by SUPP/1, a representation from a resident of Newmarket). Whilst it is important to avoid too emotive an argument on these issues, neither Network Rail – nor, it is submitted, the Secretary of State – can disregard the human reality of these risks.
- 3.2.13. Network Rail must carefully manage those risks.
- 3.2.14. Whilst risk can be *managed* at any particular crossing, the only way to eliminate risk at the crossing is through closure.³⁵ As Mr Brunnen explained in XXC, “*closure is always the best way to manage safety*”.
- 3.2.15. Network Rail considers that that approach is supported by the Office of Rail and Road (ORR) – the body principally responsible (with the Secretary of State and Scottish Ministers) for the regulation of the railway industry in Great Britain, and (so far as relevant to this Inquiry), the Health and Safety regulator for the rail industry. As is clear from its ‘*Strategy for regulation of health and safety risks – 4: Level crossings*’, it wants to ‘*encourage crossing closure*’³⁶ and advises that ‘*the removal of crossings is always the first option to be considered in a risk control strategy by the duty holder, in line with the general principles of prevention in European and UK law*’.³⁷
- 3.2.16. Various duties imposed are on Network Rail, both through its regulatory framework, its Licence conditions and the general law.³⁸ Ultimately, Network Rail is under an overarching duty to operate a safe railway, and where opportunities exist for making it safer, such as through removal of level crossings, that is what it should strive to achieve.
- 3.2.17. Network Rail observes that a number of objectors have suggested during the Inquiry that a particular crossing has an ‘*excellent safety record*’³⁹ or that the view of those using it (or the ‘*majority*’ thereof) is

³¹ Mark Brunnen PoE para 7.8

³² Mark Brunnen PoE Section 9. Network Rail would also highlight that a number of the fatal incidents recorded in the table on pages 2-8 of Mark Brunnen’s replacement Appendix 2 refer to the user of the crossing being distracted/potentially distracted.

³³ PoE paras 2.3.6 & 2.3.7

³⁴ In XIC on Day 9 discussing the fatality at S01 Sea Wall

³⁵ Mark Brunnen XXC in response to Ms Golden questions, Day 2

³⁶ Core Document NR14, page 1.

³⁷ NR14 para 6. Network Rail would also highlight, in this regard, the obligations set out in the EU Rail Safety Directive, discussed at Mark Brunnen PoE para 5.5, specifically that in Article 4.1 “Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved”

³⁸ Discussed in Section 4 of Mr Brunnen’s PoE

³⁹ Councillor Hirst on behalf of Newmarket Town Council (OBJ/3) re S22 (PoE page 2)

that the crossing 'is sufficiently safe as it is'.⁴⁰ Issue has been taken with Network Rail's All Level Crossing Risk Model (ALCRM) score for a particular crossing, usually by reference to a lack (or relative lack) of historic incidents at the crossing in question. A line of questioning was also pursued in XXC of Mr Brunnen to the effect that where a crossing was currently open, it was 'safe enough' to be used.

3.2.18. In Network Rail's judgement, that is simply the wrong approach to looking at the risks posed by level crossings, and the very real benefits that would be achieved by this Order:

- a) If a level crossing is open, it means that Network Rail considers it is "fit for use today". It does not mean that Network Rail "doesn't have concerns about them", and "wouldn't seek to improve for change in the longer term".⁴¹ Mr Brunnen chose his words very carefully in this regard.⁴² He notably did not accept the question put in XXC which was, essentially, that if a level crossing was open it was "safe enough to be used" or "deemed safe enough";⁴³
- b) The fact that a crossing is currently considered by Network Rail to be "fit for use today" does not mean that it does not carry risk. It obviously does. The risk is quantified, by means of its ALCRM score, comprising:
 - (i) An individual risk ranking A-M ('A'-highest risk and 'M'-no risk), which is independent of crossing usage; and,
 - (ii) A collective risk ranking 1-13 (1-highest risk and 13 zero risk), which is influenced by crossing usage and is independent of crossing type.

and assessed qualitatively, as explained by Mr Brunnen in Section 8 of his Proof. All level crossings carry risk;

- c) The lack of previous incidents at a crossing cannot be used as a proxy for current risk at a crossing. As Mr Brunnen explained in XIC, in the previous 2 years, there had been 7 fatalities at pedestrian level crossings, none of which had a history of fatalities in the previous 20 years.⁴⁴ As Mr Brunnen stated, the suggestion that Network Rail should have to wait for an incident before deciding something needed to be done about a crossing "is surely not the right approach";
- d) History of incidents "is a consideration, but one component of a multi-faceted risk assessment"⁴⁵, including within ALCRM itself.

⁴⁰ Mr Hodson (OBJ/13) (PoE – 'Prepared Statement' 17.01.18 – page 4)

⁴¹ Mark Brunnen XXC in response to Ms Golden questions, Day 2

⁴² As did Mr Kenning when a similar line of questioning was put to him in XXC by Ms Golden on Day 4

⁴³ XXC in response to Ms Golden questions, Day 2

⁴⁴ The details of those incidents are provided in the revised Appendix 2 to Mr Brunnen's proof (NR/INQ/46), as he explained before XXC on Day 2.

⁴⁵ Mark Brunnen XIC Day 1

Mr Brunnen explains in paras 8.7 – 8.10 of his Proof the principles used by ALCRM for modelling risk at each type of crossing, and the asset specific information required in respect of an individual crossing (which includes historic incidents at that crossing⁴⁶), and that ALCRM has been calibrated using data from the Rail Industry's Safety Management Intelligence System (SMIS) and from the Rail Safety and Standards Board's (RSSB) Safety Risk Model (SRM) which uses incident data (or precursors) from the safety events within SMIS⁴⁷ to calculate the actual levels of risk for each type of level crossing;

- e) As to criticisms of ALCRM or its reliability,⁴⁸ Network Rail would stress that ALCRM is recognised by the ORR as *the* level crossing risk ranking tool for all level crossings under Network Rail's management, and it is acknowledged to provide a good overview of risk priorities.⁴⁹ The suggestion that "*ALCRM is entirely misleading and worth nothing*" is wholly unfounded.⁵⁰ Further, ALCRM forms only part of Network Rail's risk assessment work.⁵¹ Whilst a statistical model, the Inquiry will recall Dr Algaard's evidence in XXC,⁵² "*ALCRM – it is a tool at a statistical level. Anglia [FWI⁵³] is 2.95. I experienced 3 deaths. It is real*".
- f) Nor can Network Rail rely on 'perception' of safety on the part of users of a level crossing. Mr Brunnen explained in evidence the risks which can arise from 'familiarity' with a crossing, including a perception of risk being low⁵⁴ (a risk, illustrated, by the evidence of one objector to the S22 proposals which was to the effect that 'people know what time the trains are'.) Mr Brunnen also gave the example, in XIC, of a level crossing at Tide Mills where a proposed replacement bridge was objected to, one of the main reasons being 'no one had ever died there', and where, tragically, less than a week later a member of the public was killed at the crossing.⁵⁵

3.2.19. Network Rail considers that, in reality, there is little challenge to the safety case for closure. There is no challenge to Network Rail's evidence

⁴⁶ John Prest PoE para 3.9

⁴⁷ As Mr Brunnen explains in para 8.7 of his Proof, SMIS is accessible to all rail companies managing infrastructure or operating trains and that they report data into the system. In relation to level crossings, SMIS records detailed information related to these accidents and incidents (including near-miss incidents).

⁴⁸ For example, by Mr Hodson on Day 20 of the Inquiry, and again in closings.

⁴⁹ Mark Brunnen PoE para 8.3.

⁵⁰ Mr Hodson in Closings (page 6)

⁵¹ An approach supported by the ORR – see NR/INQ/04 8.21 (Letter from Ian Prosser) & Mark Brunnen PoE para 8.6

⁵² XXC by MG, Day 2

⁵³ FWI is explained at para 8.13 of Mark Brunnen's PoE. A FWI of '1' equates (inter alia) to '1 fatality or 10 major injuries' a year. Further details can be found in NR/INQ/34

⁵⁴ Mark Brunnen PoE para 9.2

⁵⁵ Mark Brunnen XIC Day 1. See also NR/INQ/7 & NR/INQ/46 (Mark Brunnen's revised Appendix 2) which sets out details of the incident.

that the Order will achieve a reduction in risk at every crossing and, cumulatively, a material reduction across the Anglia route.⁵⁶

- 3.2.20. As set out above, there was some suggestion that risk at a particular crossing was low, and that risk on the road network was either comparable or greater.⁵⁷ This issue of 'comparative risk' is addressed below, but Network Rail indicates it should be noted at the outset that such a contention misses the point of the Order. Network Rail is responsible for safety on the rail network – both to those using train services and those interacting with it (here, at level crossings). It cannot excuse its responsibilities by noting that more people die on the roads per year than on level crossings.

Operational issues and costs

- 3.2.21. The risks carried by level crossings, and Network Rail's responsibilities in respect of the same, mean that resources must be expended in assessing, maintaining and, where necessary, upgrading each of the crossings on the network.
- 3.2.22. This is no small undertaking, as there are 771 level crossings on the Anglia Route alone, 188 of them within Suffolk.⁵⁸
- 3.2.23. In practical terms, that imposes a significant operational cost on Network Rail which is ultimately borne by railway users and taxpayers. It is self-evident that reducing the number of level crossings reduces the number of locations where those resources must be deployed, and thus resources can be prioritised where they are needed most.⁵⁹
- 3.2.24. Dr Algaard explained in evidence the costs associated with managing level crossings, and the savings which would be realised from this Order.⁶⁰ Her evidence (which was not seriously challenged by any party) was that:
- a) Closure of crossings within the Order would provide a saving of £4,777,920 in asset inspections and general maintenance over a 30-year period;⁶¹
 - b) In addition, the reduction in the number of level crossings would allow for a reduction in Level Crossing Managers, from 14 to 13, representing a further saving of around £40,000 per annum;⁶²

⁵⁶ The Order would provide a cumulative risk reduction (FWI) saving of 0.018, from a total Anglia risk of 2.95 (Dr Algaard PoE para 2.3.2). Mr Prest sets out the FWI score (and thus saving if closed) for each crossing in sections 6 to 28 of his Proof.

⁵⁷ For example, John Russell's PoE paras 2.1-2.5 (for the Ramblers' Association) (OBJ/36/W10/1) and para 28 of Andrew Woodin's PoE (SCC) re S23 Higham (OBJ/29/W2/S23)

⁵⁸ Dr Algaard PoE para 2.1.1

⁵⁹ See Mark Brunnen's evidence in XIC and XXC, fn 3 above

⁶⁰ Dr Algaard PoE Section 2.2. A more detailed breakdown of how those savings had been calculated was given in XIC (Day 2) and is set out in NR/INQ/21.

⁶¹ Dr Algaard PoE para 2.2.4

⁶² Dr Algaard PoE para 2.2.5

- c) It would represent of £1,960,200 saving over a 30-year period on renewals which would otherwise be required to the level crossings in the Order⁶³; and
- d) If the crossings in the Order were to remain open, Network Rail would be looking at a minimum capital cost of £8,884,000 over a 30 year period to 'eliminate' those passive crossing (by upgrading them to 'active' crossings) in line with Network Rail's 'Transforming Level Crossings' strategy.⁶⁴ As Dr Algaard explained in XIC, this is a "very conservative figure".⁶⁵
- 3.2.25. As an arms-length Government body, Network Rail is required to adhere to *'Managing Public Money'*⁶⁶. As Mr Brunnen explained in his evidence,⁶⁷ any money that is used unnecessarily or inefficiently directly impacts upon Network Rail's ability to deliver other improvements elsewhere across the network. As Dr Algaard explained in XXC,⁶⁸ as route director for Anglia, it is her responsibility to make sure she spends the money allocated to Anglia route "*wisely across all assets to achieve a safe, reliable, cost effective railway*". It goes without saying that money which has to be used to ensure maintenance and management of level crossings cannot be used elsewhere, even if that would represent a 'better' use of public money in terms of achieving Network Rail's Licence objectives.
- 3.2.26. Part of the challenge to this element of the strategic case was that a costs liability is simply shifted from Network Rail (in terms of maintenance etc of a level crossing) to another public body, Suffolk County Council (in terms of maintenance of new PRow). Network Rail considers that there is no such shifting of burden as it has agreed to pay commuted sums to SCC.⁶⁹
- 3.2.27. However, Network Rail identified that cost is only one part of the equation. Level crossings pose a very real constraint on the operational efficiency and reliability of the current railway system, even leaving aside future improvement or enhancements schemes (discussed below). Level crossings are a part of the railway system, and clearly the railway must therefore account for the presence, and use, of those crossings. As set out in the evidence of Mr Brunnen, Dr Algaard, and Mr Kenning, they can affect the speed at which trains can operate; they can interfere

⁶³ Dr Algaard PoE para 2.2.6

⁶⁴ Dr Algaard PoE para 2.2.8. The 'Transforming Level Crossings' strategy is core document NR17.

⁶⁵ It was suggested in XXC (MG Day 2) that there was an element of 'double counting' in that Network Rail would not, in practice, both 'renew' and 'enhance'. Dr Algaard explained that she may well have to do both if, for example, it was necessary to renew infrastructure at a level crossing and thereafter have to upgrade if, for example, a train company wished to change the timetable.

⁶⁶ An extract of which can be found at NR/INQ/4 at 5.15

⁶⁷ PoE para 5.16

⁶⁸ In response to Ms Golden questions, Day 3

⁶⁹ Paras 2.7 – 2.9 of the Statement of Common Ground between Network Rail and SCC (NR/INQ/30)

with potential upgrades to the network;⁷⁰ and can affect signalling operations.

- 3.2.28. As Dr Algaard explained in XIC,⁷¹ an incident at a level crossing (for example, a collision, or reported 'near-miss') has implications going beyond the crossing itself. A reported incident can result in trains on the line being 'stopped' or 'cautioned' (i.e. reducing speed), which impacts on performance and reliability of the railway. If speed has to be reduced, all trains behind that train will have to be slowed too. An incident in one part "can quickly ripple across the rest of the network". Mr Brunnen's evidence was to the same effect.⁷² Similarly, if the only way to manage risk at a level crossing with insufficient sighting is through imposition of a temporary speed restriction, this can also impact more widely on the operational efficiency, safety and reliability of the network, as:
- a) A temporary speed restriction may have an adverse effect on the operation of active level crossings, which are calibrated to be triggered when a train passes a certain point (potentially increasing risk at those crossings);
 - b) Trains may become out of sequence, causing network congestion and increasing signaller workload, increasing the risk of mistakes being made.⁷³
- 3.2.29. Temporary speed restrictions are also at odds with the objectives under Network Rail's Licence conditions.⁷⁴
- 3.2.30. Network Rail indicates that, again, none of these matters were seriously challenged by those objecting to the Order. Indeed, it appeared to be accepted (at least by/on behalf of SCC, Forest Heath District Council (FHDC) & St Edmundsbury Borough Council (SEBC) that closure would reduce maintenance and enhancement costs of the railway, and that having fewer level crossings would lead to greater operational efficiency.⁷⁵

⁷⁰ As Dr Algaard explained in XIC, where a train operator wishes to run more trains, or faster trains, Network Rail must assess the risk at each crossing on the line and, where risk would materially increase, take steps to reduce it back to its previous level, in order for that 'enhancement' to go ahead.

⁷¹ XIC, Day 2. PoE paras 2.4.1 & 2.4.2.

⁷² Mark Brunnen PoE para 10.18: "...slowing a train at a level crossing can have a knock-on effect on the efficiency of the network. Each train runs in its allocated time slot according to the railway's working timetable and all train movements are meticulously planned to run without causing undue delay to other services. Where a train runs late due to incident or temporary speed restriction, it can have a knock-on effect across the network, causing other trains to be delayed too. This is especially common when train services of different speed and stopping patterns share the use of a line, and when lines merge at junctions around the network. Each delayed train can then further compound the situation, causing delays across the network."

⁷³ Dr Algaard PoE para 2.4.20

⁷⁴ Specifically, the Network Management obligations set out at A.1 of Part III of the Licence (extracted at para 4.9 of Mark Brunnen PoE)

⁷⁵ From the questions put to Dr Algaard by Ms Golden on Day 2 of the Inquiry. "Not just about safety – also that all level crossings are safety risk" "only way to eliminate is to close", "and any closure will reduce maintenance and enhancement cost" "and having less will have greater operational efficiency".

3.2.31. In Network Rail's view, it is clear beyond doubt that, as Dr Algaard states at para 2.4.23 of her Proof, level crossings present a "significant risk to timetable resilience", where any asset failures or incidents can lead to train delays. Only by removing these interface points can Network Rail "entirely remove this risk to the efficient and effective timetabled service". Reducing the number of level crossings through this Order will clearly, and materially, assist in reducing this risk.

Level crossings are a constraint to enhancement of the network

3.2.32. Outside of London, Anglia has the fastest growing employment in England.⁷⁶ Network Rail is seeking to improve services within the area – an objective shared (inter alia) by SCC.⁷⁷ As Mr Kerr agreed in XXC, SCC's 'Rail Prospectus'⁷⁸ recognises that 'for some routes...level crossings slow down services', they are a constraint on the railway/railway services in this area.

3.2.33. Mr Kenning discussed, in XIC, the prospective enhancement schemes of most relevance to the level crossings included within the Order,⁷⁹ namely:

- a) Norwich in 90: a currently unfunded project, the concept of which is to transport passengers from Norwich to London Liverpool Street (on the Great Eastern Main Line) within 90 minutes.⁸⁰ This will involve running trains at speeds exceeding 100mph, at which speed the 'decision point' at Stop Look Listen crossings increases from 2 metres to 3 metres, with implications for the sighting distances required to enable safe crossing;
- b) Bury Headway Improvements (SFN)⁸¹: enhancements to the strategic freight network using the cross-country route from Felixstowe via Ely to Peterborough. The line through S25-Cattishall, S27-Barrell's and S31-Moreton Hall⁸² requires signalling and headway improvements to accommodate longer freight trains (750 metres) coming out of Felixstowe;
- c) East-West Rail: this project would utilise a cross country route yet to be fully confirmed, but with the potential for increase in passenger services between Cambridge and Ipswich.⁸³

⁷⁶ Dr Algaard PoE para 2.5.2

⁷⁷ See, e.g., Suffolk's Local Transport Plan 2011-2031 : Part 1 – Transport Strategy (Obj-29-C11), especially page 605, & the Suffolk Rail Prospectus (Obj-29-C12), especially pages 613 & 614, 617-620, 623-624, and 658

⁷⁸ Obj-29-C12 page 658

⁷⁹ By reference to the schematic at page 31 of NR24 – the Anglia Route Study (March 2016)

⁸⁰ Crossings S01, S02, S03, S04, S07, S08, S11, S12, S13, S69, S16, S17 S18 & S21 are situated on this line (see NR/INQ/52)

⁸¹ Strategic Freight Network

⁸² Crossings S23, S24, S25, S27, S28, S29, S30 and S31 are situated on this line (see NR/INQ/52)

⁸³ Crossing S22 is situated on this section of line (see NR/INQ/52) (Inspector's note: OP/INQ/92 indicates that the question as to whether the service would run through Newmarket has not yet been answered).

- 3.2.34. In Network Rail's view, level crossings are a constraint which must be addressed in order for an enhancement or improvement scheme to come forward.
- 3.2.35. As Dr Algaard explained in evidence,⁸⁴ if a future line speed or service improvement scheme is to be progressed, then a new risk assessment at each of the affected level crossings within the enhancement area must be undertaken. If the risk would materially increase, then Network Rail must take steps to bring that risk back down. That may require upgrades to level crossings, with the implementation of costly and complex technology or through costly closures with the provision of new bridges or underpasses.
- 3.2.36. Network Rail confirms that can have a material, adverse, effect on the business case for that enhancement or improvement scheme coming forward. The cost of necessary upgrades (or other mitigation) at level crossings could, in fact, be such as to turn a positive business case into a negative one – the cost of dealing with level crossings on a line making a scheme too expensive, such that it would not be progressed.⁸⁵
- 3.2.37. Dr Algaard explained in XIC that, *"when we put business case for enhancement, if we have too many level crossings it reduces the cost benefit ratio of that investment. It is a big motivation to rationalise so that when putting forwards a growth plan on our patch we have the best business case we can."* This⁸⁶ can render investment in Anglia, rather than another area, less attractive. As Dr Algaard explained⁸⁷, *"often we will be competing with other regions for funding and Government are looking for the best cba⁸⁸".* Dr Algaard emphasised in XXC⁸⁹ that *"I am keen to position Anglia as best I can to ensure that when approached by 3rd parties, the Anglia route is as attractive as possible. So, if I can pre-empt this so that future enhancement is more attractive, I will try to do it"*.
- 3.2.38. Nor is the concern about constraints just a costs issue. As both Dr Algaard and Mr Kenning explained in XXC, an important point to bear in mind is timing.
- 3.2.39. As Dr Algaard stated in XXC,⁹⁰ *"the speed at which we can enact enhancement is very important. A third party likes to see benefit as soon as possible. This order is about [Network Rail] doing the prep work early. Business case could be disregarded in favour of enhancement delivered much faster"*. As Mr Kenning explained, using 'Norwich in 90' by way of example, it is unlikely that Network Rail would be afforded the

⁸⁴ PoE para 2.5.3 & XIC

⁸⁵ Dr Algaard XIC Day 2

⁸⁶ The number of level crossings.

⁸⁷ In XIC, Day 2

⁸⁸ Cost benefit analysis

⁸⁹ In response to questions from MG, Day 3

⁹⁰ In response to questions from MG, Day 3

luxury of 2-3 years⁹¹ to effect closure of a level crossing as by then Network Rail should be “delivering the project”. Network Rail would need to know if it is going to be able to alter the footpath, for instance, before developing the signalling plan/re-signalling to get trains over 100 mph because at that point it is necessary to know if the crossing is there to deal with it, or the crossing is gone.

- 3.2.40. Mr Kenning also made clear in XXC⁹² that dealing with a crossing at the time a scheme came forward (as opposed to the pro-active, pre-emptive approach Network Rail seeks to take through this Order) could lead to Network Rail having to put in technology rather than closing the crossing which might not be the best solution for the network as a whole: specifically, when considering the railway as a system.⁹³ As he explained, this presents problems when looking to run a safe, reliable and efficient railway: if you’ve got a lot of level crossings, that seriously impacts on where you can position your signals. For an efficient railway to operate a high level of trains, signals are required not only where they need to be, but equally spaced so all signals change at the same time and everything flows at the same rate. With level crossings, it makes an irregular system that yes technology can solve and come around some of the problems if it needs to, but not system we would ideally want and not system we would wish to provide. He also reiterated that introducing technology at level crossings, rather than closing them, has an impact on Network Rail’s ability to deliver a safe and reliable infrastructure, as the problem of at-grade crossings remains (i.e. in terms of a point of public access to the operational railway) but adding new additional layers of complexity to the system.
- 3.2.41. Network Rail considers that such a reactive approach is thus, clearly, sub-optimal when compared with the pro-active, pre-emptive approach which it indicates it is seeking to take through this Order.
- 3.2.42. To be clear: Network Rail states that it is not suggesting that any of the crossings in this Order is preventing a specific enhancement scheme from coming forward. Rather, that removing these crossings would remove constraints which would otherwise have to be addressed when (or if – business case depending) a proposed enhancement was to come forward.
- 3.2.43. Questions were put to both Dr Algaard and Mr Kenning as to why closure of level crossings could not just be dealt with when the enhancement scheme comes forward⁹⁴ – potentially as part of the TWAO for the scheme itself. Even assuming a TWAO or other consent would be

⁹¹ That period being taken by reference to the current project, on the basis of it having taken around 2 years to get to Inquiry from the initial CRD, and allowing another year for completion

⁹² In response to questions from Ms Golden

⁹³ A Kenning response to Ms Golden on Day 4: “We would be given a timeline to deliver and we would end up with technology which is less than perfect. Level crossings do give us some problems and I know it seems unimportant but it is very difficult to get signals in the right place and it is technical”

⁹⁴ For example, by Ms Golden on behalf of FDHC to Dr Algaard with regard, specifically, to S22 Weatherby

required for an improvement scheme (which would be highly scheme dependent⁹⁵), it simply does not address the issue explained by Dr Algaard or Mr Kenning, outlined above. It would not provide the certainty Network Rail needed as to which assets it needed to deal with by, e.g., technology or infrastructure at the outset of the scheme (with consequences for delivery timescales). It would not remove the assets and/or potential costs from the scheme (with consequences for the business case and attractiveness of the scheme). It would not assist Dr Algaard in "*position[ing] Anglia as best I can*" so that "*the Anglia route is as attractive as possible*" to investment.

- 3.2.44. Network Rail considers that it would simply not meet the strategic objectives which, together with safety and operational efficiency/resilience, Network Rail seeks to realise through this Order. Nor would it be consistent with the specific conditions set out in Part III of Network Rail's Licence conditions, specifically those regarding 'planning' as to how it will secure the improvement, enhancement and development of the network, and promoting the 'long term planning objective' of 'the efficient and effective use and development of the capacity available on the network'.⁹⁶

3.3. **Statement of Matters 2 (SoM2) - Alternative options**

- 3.3.1. Alternatives to the proposed diversion routes, both those considered by Network Rail during development of the Order scheme and those advanced by others before or during the application process, have been considered and appraised by Network Rail. Ms Tilbrook has addressed those alternatives in her evidence.⁹⁷

National strategy

- 3.3.2. Network Rail has adopted a strategy for level crossings which includes a process of reducing the number of crossings. A copy of that strategy, '*Transforming Level Crossings 2015-2040*', can be found at Core Document NR17. The national strategy is 'a vision-led long term strategy to improve safety at level crossings on Great Britain's railways', extending over several control periods, which sets out that '*To achieve our safety vision for level crossings, we will move away from reactive management of emerging single issues in isolation, in favour of a targeted strategic plan to improve safety. This transition benefits all and will help to avoid a management culture of constant fire-fighting, waste, duplication of effort and sub-optimal solutions not aligned to a wider business strategy.*'
- 3.3.3. The national strategy reflects the requirement which the ORR has placed on Network Rail to seek significant reductions in level crossing risk: a further 25% reduction in risk at level crossings during Control Period 5

⁹⁵ Mr Kenning explained in XXC that, e.g. Norwich in 90, would probably not need a TWAO but could be done within permitted development rights within the railway corridor.

⁹⁶ Discussed at paras 4.8-4.9 of Mark Brunnen's PoE, and extracted at NR/INQ/4, 4.5-4.8

⁹⁷ In the crossing specific sections of her Proof, in Tab 7 of her Appendices (NR/32-1) and orally

(CP5) (2014–2019).⁹⁸ The ORR has made a specific, ring-fenced fund, of £99m available to Network Rail for that purpose.

- 3.3.4. Network Rail proposes, through this Order, to reduce the number of level crossings through co-ordinated multiple closures and diversions. This is distinct from, and in addition to, the process of individual closures for safety reasons, and continued focus upon closure of the highest risk crossings.⁹⁹ It is also distinct from ongoing work to improve the safety of retained crossings – both through the measures discussed in NR17 and in Section 6 of Mr Brunnen’s PoE, and through the wider objective of phasing out passive crossings by 2040.¹⁰⁰
- 3.3.5. Network Rail identifies that the ORR is aware of, and supportive of, the approach being taken by Network Rail through this Order (and the 2 related TWAO applications). It has expressly approved the use of part of the £99m ring-fenced fund for the Order proposals: see NR/INQ/19.¹⁰¹ It has further confirmed that funds can continue to be used towards the Order during Control Period 5 (CP5), even though the associated benefits may not be achieved during the CP5.¹⁰² Network Rail’s approach to seeking to reduce risk across the network, by means of reducing its at grade level crossings where opportunities exist to do so, is thus expressly endorsed by ORR, even though those crossings are not the ‘highest risk’ crossings on the network.

The Anglia Strategy

- 3.3.6. The *Anglia CP5 Level Crossing Risk Reduction Strategy* (the Strategy)¹⁰³ sets out a phased approach to removing level crossings from the Anglia Route. It was authored by Mr Kenning, and endorsed, and adopted, by Dr Algaard (then Director Route Asset Management).
- 3.3.7. Network Rail considers that the Strategy is clear and unambiguous in its terms. Its purpose 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 number of level crossings.*”¹⁰⁴ It identifies the difficulties which exist in utilising other processes for seeking to remove level crossings from the network,¹⁰⁵ and identifies that the TWAO process enables the wider

⁹⁸ As confirmed in Mark Brunnen PoE para 6.5

⁹⁹ As confirmed by Dr Algaard in XIC (Day 2)

¹⁰⁰ As Mark Brunnen explains at para 6.12 of his Proof regarding the national strategy, “*In accordance with the level crossing strategy, Network Rail will invest in additional risk controls at those level crossings across the network that cannot be closed. By rationalising the asset base Network Rail will be able to direct resources efficiently to those level crossings most in need of enhancement. It is anticipated that allocated funding, resource and deliverability challenges, and technology constraints will combine to make the implementation complex and a long-term objective. The vision-led safety is accordingly estimated to last into Control Period 9 (2040) or beyond*”

¹⁰¹ Specifically, paras 5 & 6 and Appendix 3

¹⁰² NR/INQ/19 para 8 and Appendices 4 & 5.

¹⁰³ Core Document NR18

¹⁰⁴ Page 5

¹⁰⁵ Pages 5-6

strategic benefits which result from removing level crossings from the network to be brought into the picture.

- 3.3.8. It articulates a clear strategy which includes a phased approach to level crossing closure. Phases 1 (mainline) and 2 (branchline) seek closure of crossings that “*clearly are unused or have extremely little use*”, and “*those that have a nearby alternative route utilising existing bridges as a means of crossing the railway*”.¹⁰⁶ Phase 4 of the strategy included the downgrading of roads and “*UWCs¹⁰⁷ 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 crossings where a new bridge is likely to be required. The Strategy also 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 (‘No change’).¹⁰⁸
- 3.3.9. The Strategy goes on to address the “Scheme Definition”. It notes that if a crossing is not assessed as suitable for one phase, it will be moved into a later phase, and that “*[e]ach phase provides a greater level of investment and infrastructure than the previous stage. As the Anglia Route builds up a picture of crossing works that will lead to a reduction in crossings it will allow the Anglia Route to focus its efforts on the remaining crossings, thus driving the development of solutions for these crossings*”.¹⁰⁹ Network Rail would highlight that this reflects the evidence of Mr Brunnen and Dr Algaard that closing the crossings in this Order will enable Network Rail to divert its resources to those other crossings requiring greater, or more complicated, interventions.
- 3.3.10. Section 2.2.1 of the Strategy sets out the “Scheme Definition” for Phases 1 and 2. It sets out a number of assessments to be carried out, including diversity impact assessments. Network Rail considers it is clear, from a fair reading of the Strategy, that it was keenly aware of the need to consider those using the crossings, and not purely the needs of the railway.¹¹⁰
- 3.3.11. Appendix B to the Strategy¹¹¹ sought to provide an overview of where the crossings within Anglia might fit into the phased approach. As Mr Kenning explained in XIC,¹¹² this was a desk-based exercise, listing all

¹⁰⁶ Page 9

¹⁰⁷ User-worked crossings

¹⁰⁸ Mr Kenning explained in XIC that this ‘6th phase’ was included in a revision of the CRD following significant public outcry in Stowmarket when it was believed, erroneously, that Network Rail was intending to close the level crossings in the town carrying public roads across the railway and acknowledging that there were a number of level crossings in Anglia where Network Rail was unable to be likely to effect closure – primarily where the crossings carried significant public roads.

¹⁰⁹ Page 11

¹¹⁰ See, inter alia, the need for (and benefit of the TWAO process providing for) consultation on the proposed changes (e.g. at page 5) and the identification of some crossing points (Motts Lane, Ingatestone Hall) a bridge was thought likely to be required (page 5).

¹¹¹ Which can be found at Tab 6 of Andrew Kenning’s Appendices (NR30-2)

¹¹² Day 3 of the Inquiry

the level crossings, and highlighting where it was thought crossings might fall into a certain phase. It represents the state of play as at March 2015.

- 3.3.12. It was not, however, determinative of which crossings fell into which phase. Nor was it intended to be.
- 3.3.13. Whilst the Strategy is helpful in setting the Order scheme in context, this is not an Inquiry into, nor judicial review of, the Strategy; compare with the submissions (and line of questioning in *XXC*¹¹³) on behalf of the Ramblers' Association which appear to be treating it as such. It was but the first stage in a detailed and involved process which resulted in the Order proposals – which proposals must be considered against the whole of the evidence currently before this Inquiry. In Network Rail's view, it is simply wrong to seek to 'stop the clock' as at February 2016 when the Strategy was finalised and to try to impugn the Order proposal by references to inferences drawn from language used in that document, or from matters which are not canvassed within it (for example, an express reference to the test in section 5(6)TWA or consideration of national/local plan policy).
- 3.3.14. Nor is it relevant to consider whether, and if so, how or when, later phases of the Strategy will be implemented. The Order scheme is not Network Rail's final position in respect of level crossings in Suffolk, but it is the Order proposals which are currently before this Inquiry for consideration. The crossings proposed for closure in this Order will achieve the strategic objectives discussed earlier in and of themselves: those benefits are not dependent upon future phases being implemented.
- 3.3.15. As is clear from Network Rail's *Client Requirements Document-Anglia CP5 Level Crossing Reduction Strategy (CRD)*¹¹⁴, the availability of an alternative route is at the heart of the strategy for phase 1.¹¹⁵ By definition, the proposed crossing closures in the Order are those where Network Rail considers that a suitable and convenient alternative route is available. Network Rail considers that is the issue which falls to be considered at this Inquiry, based on all the evidence presented to date: not whether Network Rail was correct to take the view, when the Strategy was drafted, that there was a 'nearby' crossing point to which users could be diverted (compare with the questions put to A Kenning in *XXC*¹¹⁶).

The Order scheme

- 3.3.16. Network Rail indicates that the Order scheme originates from the Route Requirements Document (the RRD) for Suffolk which was developed to

¹¹³ S Rumfitt questions of A Kenning on Day 5 of the Inquiry

¹¹⁴ NR18.

¹¹⁵ As Mr Kenning explained at para 3.19 of his Proof, crossings falling within Phase 2 (branch lines) for Suffolk were 'paused', along with proposals in Phases 1 and 2 for Norfolk, in February 2016 due to funding constraints.

¹¹⁶ By Ms Golden on Day [4] of the Inquiry

- give effect to Phases 1 and 2 of the Strategy.¹¹⁷ The RRD was written in tandem with the Strategy. It was a desk-based exercise, preceding engagement with the external stakeholders (such as SCC) and the appointment of Mott MacDonald to take forward assessment of the proposals. Mr Kenning explains the nature of that initial desk-based exercise, and what it entailed, in paras 3.3 – 3.7 of his Proof (NR/30-1).
- 3.3.17. Discussions began with SCC in April 2015. It is accepted by SCC,¹¹⁸ that Network Rail had consulted with SCC during all phases of the Order through to the TWAO application, which had both informed SCC of Network Rail's proposals, as well as providing Network Rail an opportunity to consider concerns raised by SCC. Mr Kerr fairly accepted in XXC that Network Rail has been keen to work with SCC, and receptive to its input, in developing proposals in this Order, S24 being an example of a crossing where SCC had suggested an alternative route to the east which Network Rail had taken up and provided.
- 3.3.18. Mott MacDonald were appointed in June 2015. Mr Kenning sets out in Section 3 of his Proof the work which Mott MacDonald was asked to undertake which included, at GRIP stage 1, a 'sense check' of the proposed diversion routes tentatively identified by Network Rail, and then more detailed assessment work at GRIP Stage 2. Network Rail would highlight, in particular, that Mott MacDonald's work was not limited to appraising Network Rail's initial proposals, but included them identifying whether they considered the alternative route identified by Network Rail was not acceptable or not viable, noting any other routes that might be more suitable, and/or any 'better' route which they might have identified.¹¹⁹
- 3.3.19. The first of two rounds of public consultation took place in June and September 2016. Examples of the round 1 and 2 consultation materials, including questionnaires, are appended to Mr Kenning's Proof at Tabs 4 & 5.¹²⁰ As Mr Kenning explained, for a number of crossings, Network Rail was considering more than one option for the diversionary route at round 1, and responses were sought as to consultees' preferred route.¹²¹ By round 2, Network Rail had identified its preferred diversionary route for each proposal.¹²² For a small number of crossings, further changes were made following the second round of public consultation, and further engagement was undertaken by way of letters to affected landowners, and notices at crossings for the wider public, as opposed to consultation events held at rounds 1 and 2.¹²³ These rounds of consultation served a number of purposes. Not only did it enable

¹¹⁷ Tab 1 of Mr Kenning's Appendices (NR/30-2)

¹¹⁸ Statement of Common Ground para 2.1, (NR/INQ/30)

¹¹⁹ See paras 3.13 and 3.18 of Mr Kenning's Proof of Evidence

¹²⁰ Copies of the consultation material for each crossing can be found in Tabs 2 and 3 of Susan Tilbrook's Appendices [NR/32-2]

¹²¹ A Kenning PoE para 3.34

¹²² A Kenning PoE para 3.39

¹²³ A Kenning POE para 3.48

Network Rail to inform the public of its proposals, and seek their views to inform development of the Order proposals, but holding two rounds of consultation was also seen as important to make clear that Network Rail had been listening to the information and feedback received and that it had informed the development of the proposals.¹²⁴ In some cases, feedback received through the consultation events led to proposals being removed from the Order, Network Rail not being satisfied it had found the right solution, or amendments being made to better meet the needs of users of the crossing.¹²⁵

- 3.3.20. As Mr Kenning explained in evidence, at various stages of the project, crossings proposed for closure were removed from the Order scheme, following more detailed assessment work and public consultation: one example, provided in XIC, being the removal of S06 Daynes Mayhew, where Network Rail was not satisfied that the proposed diversion route was suitable in light of issues raised in the Road Safety Audit carried out.¹²⁶ As Mr Kenning emphasises at para 3.45 of his Proof, *"[i]t has never been Network Rail's position that it would not alter its proposals or remove a level crossing from the Draft Order if it became apparent that that was the right course of action, as a better alternative had been identified, or it became apparent that the diversionary route proposed was not satisfactory."*

Alternatives

- 3.3.21. As set out by Network Rail at para 3.3.4 of these submissions, the Order scheme is not being pursued instead of other measures to reduce level crossings and/or to improve safety at those crossings. It is being pursued alongside other measures both within Anglia and nationally, as discussed by Dr Algaard and Mr Brunnen in evidence.
- 3.3.22. The Strategy itself identifies the difficulties which Network Rail has experienced in seeking to close level crossings through other processes (specifically, proceedings under the Highways Act 1980), see para 3.3.7 above. Network Rail set out in Opening and below why proceedings under the Highways Act 1980 are not, in fact, a process which Network Rail could use to achieve the strategic objectives which are the basis for this Order in any event.
- 3.3.23. Network Rail acknowledges that it did not actively consider, in developing the Order scheme, whether instead of closure of the 24 crossings within it, it should instead install technology and/or provide infrastructure under or over the operational railway. That would have been wholly contrary to the purposes of phase 1 of the Strategy which was to seek opportunities to rationalise the level crossing estate by diverting users to an alternative crossing point where that diversion could be carried out without the need for infrastructure to be provided. Whilst installation of technology may have assisted in reducing, or managing, risk at the

¹²⁴ A Kenning PoE para 3.42

¹²⁵ Ibid

¹²⁶ A Kenning in XIC, Day 3

crossings, it would not have removed it entirely – which would be the case with closure. Nor would it have accorded with the objectives of improving the operational efficiency, reliability and resilience of the network (for the reasons explained by Mr Kenning in evidence) or Network Rail's obligations under 'Managing Public Money'.

- 3.3.24. Nonetheless, Network Rail indicates that alternatives to closure on a crossing by crossing basis have been considered, albeit as part of the optioneering exercises carried out by the level crossing manager responsible for a particular crossing as part of Network Rail's risk assessment process, and not as part of the Order scheme. The 'cba' score for each option, set out in the crossing specific sections of Mr Prest's PoE,¹²⁷ did not inform the development of the Order scheme proposals. Nor are those 'cba' scores relied on by Network Rail in support of its application for the Order.¹²⁸ This information has been provided, however, partly by way of completeness on account of the risk assessment process carried out by Level Crossing Managers (LCMs) in respect of an individual crossing, and partly to demonstrate that whilst Network Rail has not looked at alternatives to closure as part of development of the Order scheme per se, that does not mean that it has simply ignored the possibilities which may exist for taking other steps to mitigate or otherwise manage risk, at the level crossings contained within the Order.

Network Rail's response to the position of objectors on 'strategic' issues, including process concerns

OBJ/29-SCC

- 3.3.25. Network Rail considers SCC's position, as set out in its original objection letter,¹²⁹ was that it: objected to 9 of the proposed closures within the Order;¹³⁰ would be seeking commuted sums to offset future maintenance costs of the resultant network; would be providing a list of works it considered necessary to bring the new routes into being and capable of being maintained at public expense; and, requesting modification of the Order to include Ordnance Survey grid references. By subsequent letter dated 5 December 2017,¹³¹ SCC requested that it be permitted to 'add' to its statement of case to (i) maintain a "holding objection" to all level crossing closures dependent upon provision of an

¹²⁷ A number of criticisms, or queries, have been raised about the results of the 'optioneering' exercises set out in the crossing specific sections of Mr Prest's PoE. As he explained in evidence, these exercises are carried out by the LCM responsible for that crossing, using 'generic' figures which the LCM may adjust, given his or her knowledge of that crossing and its surroundings. To the extent they provide a 'comparative' cba, that 'comparison' is between the different options being appraised for that crossing – not a comparison as against other crossings. They are also only intended to give an 'idea' of whether there may be a cba case for that option – as he made clear in evidence, if an option were to be progressed, the specific costs of the option would be considered and appraised at that stage

¹²⁸ Not least, as those 'cba' scores are limited, essentially, to safety benefits v cost and do not reflect the wider strategic objectives sought to be achieved through this Order.

¹²⁹ Which it requested stand as its Statement of Case, by letter dated 4 July 2017

¹³⁰ S01, S02, S05 (now withdrawn from the Order), S22, S23, S25, S27, S31 and S69

¹³¹ NR/INQ/5, page 4

alternative route until it had had chance to walk those routes (this "holding objection" was withdrawn in SCC's Opening¹³² on Day 1 of the Inquiry); and (ii) maintain a "holding objection" to the whole Order unless and until amendments were made to the Order to (a) address SCC's concerns regarding the certification process; (b) provide an appropriate mechanism for agreeing commuted sums; and, (c) to specify relevant information on widths and grid references to enable SCC to make a Legal Event Modification Order.

- 3.3.26. SCC confirmed on Day 24 of the Inquiry that those concerns have now been resolved through the side agreement agreed between Network Rail and SCC, and that those 'holding objections' were therefore withdrawn.
- 3.3.27. Mr Kerr made clear in XXC¹³³ that SCC was not taking issue with Network Rail's strategic case (it was confirmed in Closing that SCC was not raising an 'in principle' objection to the Order), and agreed that if the Secretary of State considered the strategic case was made out, what had to be looked at was whether there should be modifications to the Order – and that was on a crossing by crossing basis. It was also clear from closings on behalf of FHDC and SEBC that they also did not take issue with the strategic case for the Order: FHDC's concerns as to the strategic case were limited to how it had been applied to S22.

OBJ/36-The Ramblers' Association

- 3.3.28. Network Rail considers that, as set out in their closing submissions, the Ramblers' Association object to the proposed Order, 'both on grounds that Network Rail's strategic case for the Order is flawed and on grounds that, even if its strategic case were found not to be flawed, Network Rail has failed to appropriately implement it when preparing the Order.'
- 3.3.29. With respect to the Ramblers' Association, Network Rail considers it is clear that its objections on this point turn on (i) its objection to the use of the TWAO procedure rather than individual applications for closure under the Highways Act 1980; (ii) an erroneous focus on the Strategy¹³⁴ as the be-all and end-all of Network Rail's 'strategic case'; and, (iii) a failure to recognise that what has driven the selection of crossings for inclusion in this Order is whether (and where) opportunities exist to rationalise the network by diverting users to an alternative crossing point of the railway in order to meet Network Rail's strategic objectives – as evident from the Rambler's Association's complaints as to the "struggle" to find a 'case' for closure of each individual crossing.
- 3.3.30. Network Rail indicates that points (ii) and (iii) are addressed earlier in these submissions. Network Rail would also note that, despite its opposition to the Order generally, the evidence called by the Ramblers' Association on 'strategic' issues (i.e. that of Mr de Moor) was much more limited.

¹³² OP/INQ/01

¹³³ Day 8.

¹³⁴ I.e. NR18

- 3.3.31. Network rail considers that the Secretary of State will no doubt wish to bear this in mind, when determining the weight to be given to the more general opposition to the Order advanced on behalf of this national campaign group.
- 3.3.32. Network Rail identifies that point (i) is essentially a legal issue which it addressed in Opening, and that it indicated during Inquiry would be addressed further as required during Closings. Network Rail suggests that in fact, the Ramblers' Association case on this issue went no further in closing than it did in opening (reliance being placed in closing, as in opening, on the Legal Submissions prepared by Counsel for the Ramblers' Association at the Inquiry into the Cambridgeshire Order¹³⁵). In its closings, therefore, Network Rail repeats that the Ramblers' Association's case in this regard is without merit, for the following reasons:
- a) This Order falls squarely within section 1(1) of the TWA: 'an order relating to, or matters ancillary to, the construction or operation of a railway'. The rationalisation (through reduction) of the level crossing estate on the Anglia Route is clearly and indisputably a matter ancillary to the operation of a transport network: specifically, the efficient and safe operation of the railway network within the Anglia region;
 - b) To the extent that it is argued that proceeding under the Highways Act 1980 would be 'better' that is simply irrelevant. If (as is the case here), the TWAO procedure is one which may lawfully be used, the fact that objectors might prefer a different process to have been followed is nothing to the point – the application must be determined on its merits;
 - c) Nor is it correct to say, in any event, that proceedings under the Highways Act 1980 would be 'better' or 'preferable'. To achieve closure of 23 level crossings through Highways Act proceedings would involve 23 separate applications, potentially leading to 23 separate Inquiries;
 - d) In any event, those proceedings would only be available, and thus this objection engaged, where public rights of way across the railway are affected. Not all of the crossings in this Order are subject to public rights of way;¹³⁶
 - e) Further, the objects of this Order are one which the relevant provisions under the Highways Act simply do not take into account.¹³⁷ The sole basis for closure under section 118A/section 119A is safety of users of the crossing. That is only part of the objectives sought to be achieved through this Order. The safety of

¹³⁵ OP/INQ/6

¹³⁶ Not just S22 Weatherby, in respect of which Network Rail has set out its position in 2 notes to the Inquiry (NR/INQ/59 & NR/INQ/65) but also S21 Abbots. In respect of S18 Cowpasture Lane, Network Rail seeks a downgrading of rights, not closure.

¹³⁷ See paras 33-40 of Network Rail's Opening Submissions [NR/INQ/2]

users of the railway (as opposed to the PRoW), its operational efficiency, reliability, resilience and future capacity are all elements of the strategic case advanced through this Order. Section 118A/section 119A simply do not provide for closure for those wider reasons. Section 116 provides for closure only on the basis that the right of way is 'unnecessary' or the diversion would be 'more commodious' for users of the public right of way: again, not on the grounds advanced as justification for this Order. The proposals contained within this Order are simply not proposals which could be dealt with under existing, statutory procedures;

- f) Network Rail considers that the 'high point' of the Ramblers' Association's legal case appears to be that section 13(2) of the 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";
- g) The starting point here is 'the order applied for' – i.e. that which Network Rail is seeking through this application (not that which objectors say Network Rail should have). This is highly material, because the order applied for includes:
 - i. Compulsory acquisition of rights over land;
 - ii. Temporary possession of land;
 - iii. Disapplication of legislation;
 - iv. A request for deemed planning permission;
 - v. Extinguishment of private rights;
 - vi. Dedication of new public rights of way; and
 - vii. Closure (and associated alteration of rights of way across multiple crossings).

Those matters simply could not be achieved under Highways Act processes. That is a complete answer to this point.

- h) Network Rail would note, in any event, that section 13(2) is a discretionary power. The Secretary of State is not *required* to refuse the Order even if (contrary to the submissions above) the objects of the Order could have been met by other means. If, and to the extent necessary, the Secretary of State considers it necessary to consider exercising his discretion under section 13(2), no doubt he would wish to have regard to the fact that

TWAOs to close level crossings have been made on at least 5 occasions in the past, two during 2017.¹³⁸

- 3.3.33. There is, in Network Rail's submission, simply no basis for concluding that a TWAO is not an appropriate and lawful means of seeking to affect the objects of this Order.

OBJ/32-The NFU

- 3.3.34. Network Rail recognises that the NFU's Statement of Case raised issues both of general concern to its members and, specifically, with regards to 3 of its members: (i) D & D Caldwell (S03); (ii) Messrs E Hudson Baker (S12, S13, S69); and (iii) Mr Finbow (S13). However, the Proof of Evidence of Ms Staples addressed only the NFU's general concerns. It was confirmed, on Day 1 of the Inquiry, that the NFU would only be presenting a case on its general concerns, but otherwise supporting its members who were appearing before the Inquiry.
- 3.3.35. Network Rail considers that the NFU's 'general concerns' were, in fact, just that: general concerns about level crossing closures and what that might mean for its members, and concerns about replacement PRowS being provided on their members' land. Ms Staples very fairly agreed in XXC that the concerns identified in her proof as to the impacts on agricultural operations of the closure of level crossings¹³⁹ were general concerns for the NFU and were not specific to this Order. Ms Staples also accepted that a number of concerns identified as regards new PRow were also 'general' concerns as opposed to concerns related to specific proposals in the Order.¹⁴⁰
- 3.3.36. Ms Staples also agreed in XXC that when looking at the provision of new PRowS as replacement routes, it was necessary to look at a number of matters: it is apparent that the NFU's key concern was that the Secretary of State must have regard to the affected landowner, not just users of the PRow. That is common ground.
- 3.3.37. As was put to Ms Staples in XXC,¹⁴¹ what the issue really comes down to as between Network Rail and the NFU is not that Network Rail has not looked at the needs of farmers, but that the NFU takes a different view as to where the balance falls. Ultimately this will be a question for the Secretary of State to consider when assessing the proposals at individual crossings.

¹³⁸ E.g. Ammanford Level Crossing Order 1996; Northumberland Park and Coppermill Lane Closure Order 2017; Abbots Ripton Level Crossing Order 2017. Another relevant example is the recent Chiltern Railways (Bicester to Oxford Improvements) Order 2010/2679 which authorised the closure of 3 road level crossings, 13 footpath level crossings and 11 accommodation level crossings. Copies are in the Legal Bundle [NR/INQ/63]

¹³⁹ Detailed at section 4 of her Proof. There are, for example, no proposed closures of vehicular or occupation crossings within this Order, providing access to farmland (cf the concern expressed at para 4.2)

¹⁴⁰ For example, the Order scheme does not promote any new PRowS near poultry sheds (cf para 5.11 of Ms Staples' Proof). Nor is Network Rail proposing any new footpath route adjacent to an Internal Drainage Board drain (cf para 5.17 of Ms Staples' Proof) See Nigel Billingsley's Rebuttal Proof of Evidence to the NFU (NR/29/4/1) paras 3.2 and 3.4

¹⁴¹ On Day 8 of the Inquiry

3.3.38. Network Rail has acknowledged that, in a couple of cases, out of date material was provided to landowners prior to the Order application being deposited.¹⁴² It has acknowledged that that was likely to have caused confusion and has apologised for the same. The NFU's complaints as to consultation are not otherwise accepted by Network Rail. It relies on the evidence of Mr Kenning and Mr Billingsley in this regard.

3.4. **Statement of Matters 3 (SoM3) - Policy**

3.4.1. Network Rail acknowledges that consideration of PRow policy does not end with the DfT's '*A Guide to TWA Procedures*'. There is a wider policy context to consider.

3.4.2. National and local policy supports the provision of a good public rights of way network, and understandably so. As recognised in the Government's '*Cycling and Walking Investment Strategy*',¹⁴³ for instance, walking and cycling should be encouraged. There are clear health and social benefits which arise from walking, which have been emphasised during this Inquiry.¹⁴⁴ Those benefits, and the importance of maintaining the PRow network, are not in dispute, and are wholly accepted by Network Rail. The proposals would be consistent with the aim of the *National Planning Policy Framework* to protect public rights of way and access¹⁴⁵. Similarly, Network Rail recognises the need to ensure that its Order proposals do not undermine the objectives sought to be achieved by Suffolk's *Rights of Way Improvement Plan 2006-2016* (ROWIP)¹⁴⁶: this was confirmed by Ms Tilbrook (inter alia) in XXC on Day 23 of the Inquiry,¹⁴⁷ and her evidence throughout the Inquiry was to the effect that she considered the proposals advanced in the Order were consistent with those objectives. They include the provision of a better signed, maintained, accessible and safer network. These objectives align closely with the strategic safety case behind the Order¹⁴⁸.

3.4.3. However, those high-level policies¹⁴⁹ and aspirations cannot be seen in isolation. Non-motorised journeys are part of a wider system of sustainable travel, which includes rail travel.

3.4.4. The *National Policy Statement for National Networks* (NPSNN) identifies 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*

¹⁴² Specifically, Mr Baker (OBJ/26) and Mr & Mrs Brace (OBJ/48)

¹⁴³ Appendix 2 to Mr De Moor's PoE

¹⁴⁴ For example, by Mr De Moor for the Ramblers' Association

¹⁴⁵ NR/28-1 para 2.6.15.

¹⁴⁶ Mr Kerr confirmed in XXC (Day 8) that the draft ROWIP 2 was not a document that Network Rail would have had in developing the Order proposals and it was not suggested that Network Rail should, but had not, had regard to the same.

¹⁴⁷ In response to questions from Mr Farthing on S24

¹⁴⁸ NR/28-1 para 2.6.17

¹⁴⁹ As Mr Kerr agreed in XXC (Day 8) the policies referred to in his PoE relevant to these issues were "high level", and did not contain "criteria" – e.g. that policy not satisfied unless x, y or z were satisfied.

network that is capable of stimulating and supporting economic growth'.¹⁵⁰ The *National Planning Policy Framework* (the Framework) promotes sustainable transport, which includes public transport. *The Suffolk Local Transport Plan 2011-2031* (SLTP) highlights the importance of seeking improvements to (inter alia) the rail network, identifying that '*Transport has a key role to play in delivering Suffolk's economic strategy*'.¹⁵¹ Similarly, the *Suffolk Rail Prospectus*¹⁵² highlights that '*A decent rail service is vital to growing our county's economy, attracting investment, creating jobs and supporting a growing population. It is our ambition to improve rail services and infrastructure, and we will use the priorities contained within this document to make our case to Government and the wider rail industry.*' The objectives of Suffolk's current ROWIP include the provision of a better signed, maintained, accessible and safer network¹⁵³.

- 3.4.5. All of those high-level policy documents also recognise the importance of access to local routes for non-motorised users.
- 3.4.6. Network Rail suggests it is simply wrong, therefore, to attempt to set walking and cycling against train travel, as if they are in competition or conflict. The issue is about striking the right balance.
- 3.4.7. Network Rail considers that for each of the proposals in the Order, it has struck the right balance by providing a suitable and convenient alternative route. SCC and the Ramblers' Association have objected to those crossings where they consider the proposed diversionary route is not suitable and convenient.
- 3.4.8. In Network Rail's view there is, in reality, no dispute as to the relevant policy framework and the extent to which the objectives of the Order scheme comply with national and local policy:
- a) The strategic aims underlying the Order include improving the safety of the railway network as well as its financial and operational efficiency, in keeping with the aims of the NPSNN¹⁵⁴;
 - b) A more safe, efficient and cost-effective rail network contributes to sustainable transport, which in turn supports economic growth and improves the conditions in which people live, work, travel and take leisure. Furthermore, given the limited nature of the scheme, the proposals protect public rights of way and access. Having regard to economic, social and environmental factors, the Order would deliver sustainable development, in keeping with the aims of the Framework¹⁵⁵;

¹⁵⁰ Para 2.2., extracted at para 5.2 of Mark Brunnen's PoE (A copy of the NPS is at NR/INQ/4/5.1)

¹⁵¹ OBJ/29/C11 page 580 (internal page 11)

¹⁵² OBJ/29/C12.

¹⁵³ NR/28-1 para 2.6.17

¹⁵⁴ NR/27-1 paras 5.1-4.

¹⁵⁵ NR/28-1 paras 2.6.12-15 and NR/INQ/144.

- c) Improving Suffolk's transport networks and encouraging a shift to more sustainable travel patterns accords with the aims of the SLTP; and,
- d) The strategic safety case underlying the Order aligns closely with the objective of the ROWIP to provide a better signed, maintained, accessible and safer network.

In respect of local plan policies, as Ms Tilbrook explained in XXC, in developing the Order proposals, Mott MacDonald has worked on the basis that policies relating to walking, cycling (etc) will be consistent with national policies, and thus does not see any reason why the Order proposals would not be compliant with such local plan policies.

3.4.9. Network Rail acknowledges that, in reality, the dispute as to whether the Order proposals comply with relevant policies has to be considered on a crossing by crossing basis and depends on whether the proposed diversionary route is or is not "suitable and convenient".¹⁵⁶

3.4.10. There is one final point which needs to be considered in the context of policy, which is the approach to be taken to Network Rail's request for a Direction in respect of deemed planning permission. Network Rail has set out its position in a Note submitted earlier in the Inquiry in NR/INQ/55, the contents of which are not repeated here. In brief, the request for a Direction in respect of deemed planning permission does not fall to be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004: i.e. in accordance with local development plan policies unless material considerations indicate otherwise. Network Rail notes the position set out in the TWA Guidance, that "*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*" and whilst that is clearly recognised as the Secretary of State's stated position as to how applications will be considered, Network Rail submits that it would be wrong for this statement of policy to be elevated to, in effect, a statutory test by another name.¹⁵⁷ Network Rail would highlight in this regard para 25 of the Guide to TWA Procedures,¹⁵⁸ which makes clear the status of that document, stating as follows:

'The guidance given in this booklet on the TWA procedures and on how they are intended to be applied is based on DfT's understanding of the statutory provisions and the principles underlying them, and on experience of best practice. It is intended to help applicants and others with an interest. However, no reliance should be placed on any legal interpretation given in this guidance, as only the courts can give an authoritative

¹⁵⁶ This was agreed by Mr Kerr in XXC and is believed to be common ground

¹⁵⁷ Cf the approach seemingly taken to this issue by SCC and SEBC at paras 11 & 14 of their Note in response: OP/INQ/60

¹⁵⁸ A copy of which can be found at Tab 23 of the Legal Bundle [NR/INQ/63]

interpretation of the law. Applicants and other interested parties should seek their own independent legal advice where necessary. Should there be any inconsistency between the guidance in this booklet and the provisions in the TWA or relevant SIs (such as might arise from a subsequent change in the legislation) the latter must prevail.'

3.5. **Statement of Matters 4 (SoM4) - The Level Crossings**

3.5.1. **Network Rail's general approach to public rights of way**

3.5.1.1. Network Rail's position on this issue was set out in 3 notes submitted to this Inquiry: (i) NR/INQ/13 (Section 5(6) TWA – the approach taken by Network Rail to whether an alternative route is 'required to be provided'); (ii) NR/INQ/45 (a supplementary note on 'required'); and (iii) NR/INQ/26 (agreed note between Network Rail, SCC and the Ramblers' Association on the approach to 'suitable and convenient').

3.5.1.2. Network Rail's position is summarised here.

3.5.1.3. The starting point is the statute. Section 5(6) TWA provides that an order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that (a) an alternative right of way has been or will be provided, or that (b) the provision of an alternative right of way is not required.

3.5.1.4. That is, in reality, a simple test that does not require glossing.¹⁵⁹ If an alternative right of way is required, it must be provided and provided through this Order. If it is not required, for example, because the existing network is sufficient, then it need not be provided through this Order.

3.5.1.5. Network Rail has, however, set out its approach to whether the provision of a new (alternative) right of way is required in NR/INQ/13 and NR/INQ/26. In brief:

- a) Provision of a new (alternative) right of way is not 'required' where no public rights of way exist over the crossing (section 5(6) is concerned only with public rights of way);
- b) When considering whether an alternative right of way needs to be provided, Network Rail has looked at whether a suitable diversionary route would be provided by the existing PRow or highway network. If so, it has determined that provision of an alternative route is not required to be provided;
- c) In reaching that determination it has not limited its consideration to whether a diversionary route already exists on the ground, but whether that diversionary route is (or could be made) 'suitable and convenient' (having regard to the policy test in the TWA Guidance, discussed below). It has also been informed by the views of the Highway Authority;

¹⁵⁹ Compare with the rather tautological approach taken by SCC in its submissions on 'required': OP/INQ/24.

d) Where the existing PRow/highway network does not provide a potential diversionary route or it was considered that a diversion provided by the existing PRow/highway network would not be suitable and convenient, an alternative right of way has been provided for within the Order proposals.

- 3.5.1.6. In reality, the submissions made by SCC on the question of whether an alternative right of way is 'required' are matters of form not substance.¹⁶⁰ Network Rail and SCC essentially reach the same conclusion through different approaches. SCC argue (inter alia) that if a diversionary route exists on the existing network that should be regarded as a case where an alternative right of way 'has been provided' under section 5(6)(a). Network Rail regards that as a situation where 'provision of an alternative right of way is not required'. It is, essentially, a distinction without a difference, albeit Network Rail maintains that its approach to section 5(6) is the legally correct approach.
- 3.5.1.7. The main debate between the main parties to the Inquiry turns on the guidance provided in Annex 2 to the DfT's *Guide to TWA Procedures*. The Guidance provides (page 105) that:
- '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.'*
- 3.5.1.8. It is common ground¹⁶¹ between Network Rail, SCC and the Ramblers' Association that those words are being used in the context of guidance and should not be construed as if they were a statute. The words should be given their ordinary, common sense meaning having regard to the statutory scheme and policy guidance of which they form part.
- 3.5.1.9. Network Rail's position is that in considering whether an alternative route is suitable and convenient, this needs to take account of the purpose and use of the existing route, its local environment, and relationship with the wider PRow network. It has looked at the function served by the existing PRow, having regard to the origin and destination points, desire lines, and whether the route is, for example, a utility route or a leisure route.
- 3.5.1.10. SCC and the Ramblers' Association agree that those are all matters to be taken into account. They consider, however, that the factors to be considered should also include the quality of experience of using the route (i.e. enjoyment of the route).
- 3.5.1.11. That distinction, function v quality of experience, encapsulates the primary point of disagreement between Network Rail and SCC/the Ramblers' Association when considering the application of the statutory test to the Order proposals.

¹⁶⁰ OP/INQ/24

¹⁶¹ NR/INQ/26 para 3

- 3.5.1.12. Network Rail considers that when assessing whether a proposed alternative route is 'suitable and convenient' it is critical to bear in mind the statutory context in which that test falls to be applied, and the consequences of the test not being met. This Order is pursued under the TWA, not the HA 1980. That is an important distinction. The focus, on applications under section 118A/section 119A/section 116 of the HA 1980 is very clearly, one might say almost solely, on the interests of those using a specific PRow. That is a wholly different statutory context to the TWA. The guidance is notably silent on any requirement to consider enjoyment of the route as a whole.¹⁶² Nor does it invite a comparative exercise between the established PRow and its replacement. The objectors' suggestion that the use of the word 'replacement' in Annex 2 of the *TWA Guidance* imports such an exercise¹⁶³ is simply unsustainable.
- 3.5.1.13. The TWA provides an authorising regime for transport projects, which schemes 'can have a very important role to play in improving the country's infrastructure'.¹⁶⁴ Section 5(6) provides an important protection for public rights of way, which need to be disturbed or diverted in order for the scheme to be implemented. Understood in that context, it is, in Network Rail's submission clear, that the focus on 'function' as opposed to more subjective consideration of 'enjoyment' is correct. It would, for example, be clearly unreasonable if a transport scheme which would realise significant public benefits were to be precluded from coming forwards, because the alternative route for users of a PRow was not considered suitable and convenient because it did not offer the same 'views' or 'aesthetic enjoyment' as that which needed to be displaced for the scheme.
- 3.5.1.14. That is not to say that 'journey quality' has been ignored by Network Rail in developing, and appraising, the proposed diversionary routes. Ms Tilbrook confirmed in XXC that that had been considered. It is simply not part of the 'test' which falls to be applied under section 5(6).
- 3.5.1.15. Similarly, a common-sense approach needs to be taken when considering who are the 'existing users' of the crossing.
- 3.5.1.16. Network Rail maintains that the correct approach is to look at existing use and users of the PRow having regard (inter alia) to the characteristics of and constraints which exist on the existing PRow, and purposes it serves. It acknowledges that future occupants of consented developments in the vicinity of the crossing can be included within that group: as, for example, at S25-Cattishall. It does not agree, however, that 'existing users' requires the decision maker to have regard to any person who might be legally entitled to use the route (but for whom the route is not usable due to, e.g., accessibility constraints), or who might, theoretically, do so in the future (e.g. following construction of a new

¹⁶² Compare with the test in s.119A of the Highways Act 1980

¹⁶³ As submitted by SCC and the Ramblers' Association: NR/INQ/26 para 11.

¹⁶⁴ DfT 'Transport and Works Act Orders: a brief guide' para 3.

development not yet consented in the wider area, as discussed in respect of S27/28 and the recently consented housing developments in Thurston¹⁶⁵). It is important to bear in mind in this regard that the language used by the Secretary of State, focussing as it does on *existing* users of the public right of way, indicates, also, that the Secretary of State is not seeking *enhancements* to the PRow network under section 5(6) TWA.

3.5.2. **Road safety issues**

3.5.2.1. A number of objectors have criticised the lack of a comparative assessment of the 'risks' at a particular level crossing and the 'risks' of pedestrians using the rural road network proposed as part of a diversionary route following closure of the crossing.

3.5.2.2. Network Rail indicates that there is no established methodology for comparing risk at level crossings with risks on rural roads.¹⁶⁶ Such attempts as have been made in the past, specifically for the House of Commons Transport Select Committee,¹⁶⁷ led to the conclusion that:

*'Analysis of Network Rail and Department for Transport data (see Annex) shows that if an average walking trip includes a level crossing, the fatality risk to a pedestrian is about double the risk of an average walking trip without a level crossing. Overall, there is an increase of around 8% in the risk of a fatality during an average car journey that includes a level crossing, compared with one that does not.'*¹⁶⁸

3.5.2.3. Ms Tilbrook has provided a Note to the Inquiry, NR/INQ/62, which seeks to provide some clarity as to how that conclusion was arrived at, from the data set out in Appendix 1 to the Select Committee report, and confirming (at para 10) that she considers that that Report cannot be read as supporting the suggestion that removing a level crossing from a walking trip and replacing it with an additional length of walking would equate (in risk terms) to a walk that includes a level crossing.

3.5.2.4. Ms Tilbrook explained in evidence how road safety issues have been considered in assessing proposed diversionary routes.¹⁶⁹ The Inquiry has before it RSAs carried out by an independent RSA team within Mott MacDonald, and the independent RSAs carried out by Capital Traffic commissioned by SCC. It is common ground (Ms Tilbrook, Mr Russell, and Mr Haunton all agreed) that both should be considered in looking at the Order proposals: neither 'trumps' the other. It is also common ground that different road safety auditors can reach different

¹⁶⁵ NR/INQ/105

¹⁶⁶ This appears to be common ground: Mr Russell stated in XIC, for example, that it was his understanding that rail and road assessment follow different paths so no agreed common methodology

¹⁶⁷ NR/INQ/12 2.6.18. 'House of Commons Transport Committee Safety at Level Crossings Eleventh Report of Session 2013-14'

¹⁶⁸ Para 15 of NR/INQ/12 2.6.18.

¹⁶⁹ Section 1.5 of her PoE

conclusions as to the nature (or extent) of an issue and recommendations in respect of the same¹⁷⁰: and that does not mean that one of the audits is somehow deficient or defective. Mr Russell agreed in XXC that his evidence should not be regarded as a further RSA.¹⁷¹

- 3.5.2.5. There is no basis, in Network Rail's submission, for suggesting that the RSAs commissioned by SCC should be afforded 'greater weight' than those commissioned by Network Rail to the extent that views on potential issues, or recommendations, differ. That Network Rail, rather than SCC, was identified as the 'Overseeing Authority'¹⁷² did not affect the substance of the RSAs themselves – or the way the auditors carried out their work. Nor is there merit whatsoever in the suggestion – which was, rather astonishingly, pursued by Mr Russell despite the clear evidence from Ms Tilbrook on this matter¹⁷³ – that the Network Rail commissioned RSAs were not sufficiently 'independent' by reason of correction of a minor typographical error in the report being 'signed off' by Ms Tilbrook.¹⁷⁴
- 3.5.2.6. Nor, with respect, is there any merit in the criticisms made by Mr Russell of the Network Rail commissioned RSA by reference to information he says should have been provided to the auditors, but which did not form part of the Audit Brief. Firstly, the information which Mr Russell considers should have been provided,¹⁷⁵ is not a "mandatory requirement" of HD 19/15¹⁷⁶. What is mandatory, however, is for the road safety audit team to request further information if they consider the Road Safety Audit Brief to be insufficient for their purpose.¹⁷⁷ They did not do so – and thus clearly regarded the information they had to be sufficient. Secondly, that information was not included within the Road Safety Audit Brief provided to Capital Traffic who clearly also did not regard the information they were provided with as not sufficient.
- 3.5.2.7. The suggestion¹⁷⁸ that the Secretary of State should reject the application or defer a decision until a further stage 1 audit has been carried out is thus wholly without merit – and was notably not pursued in the Ramblers' Association's Closing Submissions.
- 3.5.2.8. It was common ground that in respect of proposed diversions utilising the existing road network which had had issues identified on the Stage 1 RSA and/or which would involve some works to the highway, would need to be subject to a Stage 2 RSA. It was common ground between

¹⁷⁰ Mr Russell in XXC (Day 6), Mr Haunton in XXC (Day 14)

¹⁷¹ Day 6

¹⁷² Which it should have been, in accordance with HD 19/15, as ST acknowledged in XXC (in response to questions from SR, Day 6)

¹⁷³ Ms Tilbrook PoE para 1.15.11; Appendices Tab 16,

¹⁷⁴ As explained in NR/INQ/44

¹⁷⁵ At paras 3.5 – 3.10 of his Proof (OBJ/36/W10-1)

¹⁷⁶ Specifically, it is not included in a square box – see para 1.9 of HD 19/15. (NR/INQ/15 Tab F)

¹⁷⁷ Para 2.90 of HD 19/15

¹⁷⁸ At para 3.11 of Mr Russell's Proof

Ms Tilbrook and Mr Russell¹⁷⁹ that not only could the stage 2 auditors go back and look at how stage 1 issues had been dealt with, "it is required to go back – stage 2 auditor is required to look at stage 1 and designer response".¹⁸⁰ This is in line with HD 19/15¹⁸¹, para 2.34 of which provides that '*The Stage 2 Road Safety Audit should include a review of the issues raised in the Stage 1 Road Safety Audit Report. Any issues that have not been satisfactorily resolved from the Stage 1 Road Safety Audit either by an element of the scheme being redesigned, as a result of clarification given by the provision of further information or by an approved Exception Report, should be reiterated in the Stage 2 Road Safety Audit Report.*'

3.5.2.9. In reality, concerns about RSA stage 2 audits turned on the wider issues relating to how works to the existing highway forming part of a diversionary route was linked in with the procedures for certification and closure of crossings. This issue has now been addressed through the side-agreement between Network Rail and SCC, and the modifications discussed on 25 May are directed at that concern (ref. Article 14) in the event that the Inspector considers that such an amendment should be made.

3.5.3. ***Statement of Matters 4e) (SoM4e))-Environmental appraisal***

3.5.3.1. An Environmental Screening Request Report was prepared by Mott MacDonald and submitted to the Secretary of State in January 2017, with a request for a direction as to whether an Environmental Impact Assessment (EIA) was required. That report assesses the potential effects of the Order scheme on a crossing-by-crossing basis (as well as considering its cumulative effects) on:

- a) Ecology;
- b) Landscape;
- c) Historic Environment;
- d) Air Quality;
- e) Noise;
- f) Ground Conditions;
- g) Water Resources (including consideration of flood risk);
- h) Traffic and Transport; and,
- i) Socio-economics and Community.

3.5.3.2. The report concluded that there would be no potentially significant effects, either at individual crossings or from the Order scheme as a

¹⁷⁹ Mr Haunton appeared to take a different view in response to questions from the Inspector on Day 14.

¹⁸⁰ Mr Russell in XXC on Day 6.

¹⁸¹ Extracts from which are at Tab F of ST's Supplementary Appendices (NR/INQ/15)

project. By letter dated 3 March 2017,¹⁸² the Secretary of State notified Network Rail of his decision that an environmental impact assessment was not required.

- 3.5.3.3. In a Technical Note appended to Ms Tilbrook's Proof¹⁸³, Mott MacDonald confirmed that whilst the screening assessment was carried out under the requirements of Schedule 1 to the TWA Applications Rules which did not include 'health' as a topic,¹⁸⁴ due to the limited size, nature and location of the works, it was unlikely that the proposed works would give rise to adverse significant effects to human health. The Note also confirmed that the removal of S05 Pannington Hall from the Order scheme (post the EIA screening request and application) did not affect Mott MacDonald's assessment or conclusions.
- 3.5.3.4. Network Rail has also provided 2 Notes to the Inquiry, NR/INQ/81 & NR/INQ/82, setting out how the approach it has adopted to its environmental assessment work, including surveys for protected species, accords with the guidance set out in ODPM Circular 6/2005-Defra Circular 1/2005. This was discussed further at the 'Modifications' session on Day 24. Network Rail considers that the Secretary of State can confidently proceed on the basis that the Order proposals would not be likely to give rise to significant environmental effects or adverse impacts on protected species or habitats.
- 3.5.4. ***Statement of Matters 6 (SoM6)-Network Rail's general approach to acquisition of rights / powers over private land***
- 3.5.4.1. Mr Billingsley sets out in some detail in his Proof the nature of the rights and powers sought by this Order,¹⁸⁵ and the compensation provisions for landowners affected by the exercise of those powers.
- 3.5.4.2. Network Rail considers that the essential point is this: those landowners whose interests in land area adversely affected by the Order scheme will receive compensation. That compensation will include (where established) disturbance losses resulting from temporary use of land (for example, for loss of crops whilst a PRoW is constructed, or an inability to use the land for shoots during such works¹⁸⁶); diminution in value and/or disturbance losses as a result of dedication of a new PRoW on the land over which it passes, 'and land held therewith', under section 28 of the HA 1980 (which could include, for example, costs associated with managing impacts/effects arising from the new PRoW with activities on the land)¹⁸⁷; and, reasonable fees associated with such a claim.¹⁸⁸

¹⁸² NR11. The decision followed consultation with Suffolk County Council, Babergh and Mid Suffolk District Councils, Ipswich District Council, West Suffolk District Council, the Environment Agency, Natural England and Historic England (Historic England did not respond)

¹⁸³ NR-32-1, Tab 8

¹⁸⁴ Health having been identified as an issue on which the Secretary of State wished to be informed in the Statement of Matters

¹⁸⁵ The Order does not include any compulsory acquisition of land.

¹⁸⁶ Mr Billingsley XIC Day 23 (in the context of S24)

¹⁸⁷ NB XIC / XXC Day 23 (in the context of S24)

¹⁸⁸ NB XIC/XXC Day 7

- 3.5.4.3. Where rights are to be acquired by the Order, Network Rail submits that a compelling case for that compulsory acquisition has been made. The strategic case for closure of these crossings is summarised above. The acquisition of rights (or powers) over land is required to implement the Order scheme – specifically, through the creation of alternative rights of way, as required by section 5(6) of the TWA. The acquisition of those rights is thus both necessary and justified by a compelling case in the public interest. Moreover, Network Rail maintains that it has taken a proportionate approach in identifying the powers and rights which it seeks to achieve those public benefits: it has limited its powers to acquiring rights – both to create new PRoW and to access land – and powers to temporarily use land, rather than seeking acquisition of the land *per se*. Compensation is available to those landowners for losses suffered as result of exercise of those powers.
- 3.5.4.4. Mr Billingsley made clear in evidence his view that both the domestic and European Convention on Human Rights (ECHR) ‘tests’ for compulsory acquisition were met in respect of this Order. That conclusion has not been challenged by any party. Nor is there any reason for concluding to the contrary.
- 3.5.5. ***Points of general application***
- 3.5.5.1. Firstly, Network Rail does not accept that SCC’s witnesses are better placed to make assessments of whether the proposed alternative route is “suitable and convenient” than Ms Tilbrook, or that their evidence should be preferred in default. It is Ms Tilbrook who has made the more thorough assessment, informed by a wide team of specialists at Mott MacDonald. Nor is there any basis for suggesting that the weight to be afforded to Ms Tilbrook’s evidence should be reduced as a result of her not having, personally, walked every route; or it not being confirmed that the same person within the Mott MacDonald team had walked both the existing and the ‘full’ diversionary route; or the Mott MacDonald team not having included a person with experience as a PRoW Officer.
- 3.5.5.2. Ms Tilbrook is an experienced highways engineer with very extensive experience of dealing with public rights of way. As she explained,¹⁸⁹ the team she works with is an experienced one, which has diverted and created PRoWs in many schemes, understands the issues which need to be considered, and liaison with local authorities. As she identified, there had been no suggestion from the PRoW team at SCC that Mott MacDonald were not looking at the right elements or issues in developing the proposals.¹⁹⁰
- 3.5.5.3. More importantly, her evidence should be assessed on its substance. It is detailed and careful in writing. Orally, her evidence was clearly fair and balanced; she did not seek to diminish or avoid the concerns of objectors. She gave full and thoughtful answers. Network Rail submits

¹⁸⁹ In response to Ms Golden questions Days 5 & 6

¹⁹⁰ XXC in response to Ms Golden questions Day 5

that Ms Tilbrook very obviously is suitably qualified to give her evidence. Once satisfied as to that, her evidence should be assessed on its merits.

- 3.5.5.4. Secondly, there was some considerable discussion during the Inquiry as to the availability (or otherwise) of highway verges where use of rural roads was included within a proposed diversionary route and as to the 'width' of the pedestrian facilities which needed to be available (or provided). Network Rail identifies that, in respect of highway verges generally, there is a rebuttable presumption that in respect of an ordinary highway running between fences (or hedges), the highway extends to the whole of that space between fences/hedges (also known as the 'hedge-to-hedge' presumption).¹⁹¹ Ms Tilbrook confirmed repeatedly in evidence that nothing had been put forward to rebut that presumption in respect of the various verges being discussed during the Inquiry.¹⁹² Similarly, she confirmed that SCC had not raised any concerns that routes were not part of the highway.¹⁹³ To the extent this point is relied on by the Ramblers' Association as demonstrating that a proposed diversionary route is not suitable and convenient, it is thus wholly without merit.
- 3.5.5.5. As regards widths of footways / pedestrian facilities, it was common ground between Ms Tilbrook and Mr Russell that there is no specific guidance on widths for rural areas.¹⁹⁴ As Ms Tilbrook explained in evidence, Mott MacDonald has drawn on a number of guidance documents in considering the suitability of a route¹⁹⁵ – and no one has seriously suggested that it has failed to have regard to a standard or guidance which should have been considered.
- 3.5.5.6. Network Rail considers that the difference between Ms Tilbrook and Mr Russell appears to come down to two main points. Firstly, Ms Tilbrook considers that 700 mm is the guidance in Manual for Streets (MfS)¹⁹⁶ as to the minimum width required for a pedestrian to walk upon. Mr Russell states it is 750 mm. It is clear, however, from the page referred to by Mr Russell (page 68), when read with 'Inclusive Mobility' which is where these indicative minimum distances are taken from,¹⁹⁷ that this is the minimum width for a person who is mobility impaired. As set out in section 2.2 of 'Inclusive Mobility'¹⁹⁸ *'Someone who does not use a walking aid can manage to walk along a passage way less than 700 mm wide, but just using a walking stick requires greater width than this; a minimum of 750 mm'*. Ms Tilbrook's position is thus clearly the correct one. Secondly, Mr Russell contends that pedestrian facilities of a minimum of 1.2 metres should be provided, by

¹⁹¹ See e.g. paras 15-15 of the Open Spaces Society Information Sheet C10 'Highway Verges', at Tab 12 of Ms Tilbrook's Appendices (NR/32-2);

¹⁹² E.g. in Re-IX on Days 6 and 17 [S23/24]

¹⁹³ In Re-IX on Day 6

¹⁹⁴ Mr Russell in XXC, Day 6.

¹⁹⁵ ST PoE para 1.11.6. See also Network Rail's response to Mr Crosby on this matter: NR/INQ/110

¹⁹⁶ Tab J of ST's Supplementary Appendices NR/INQ/15

¹⁹⁷ See para 6.3.22 on page 68 of MfS

¹⁹⁸ Tab H of ST's Supplementary Appendices NR/INQ/15

reference (inter alia) to a 450 mm allowance to avoid street furniture being clipped by passing vehicles. Ms Tilbrook has explained why she does not consider that to be necessary, or indeed, the analogy appropriate, in the context of the sort of roads being proposed for use as part of the Order proposals.

- 3.5.5.7. Thirdly, a number of criticisms have been made (by a number of objectors) as to use of the census data collected during the development of Order proposals and of 'origin and destination' surveys not having been undertaken. Network Rail considers that those criticisms are without merit.
- 3.5.5.8. Ms Tilbrook explained on a number of occasions that the census data only provided a 'snapshot' of a point in time and was not determinative, nor treated as determinative, of levels of use. It had not been relied upon to justify a decision as to whether a proposed alternative route was suitable and convenient, and decisions were not based solely on that data. It was but one information source drawn on when Mott MacDonald was considering the purpose of the current route, who was using it, and the purpose(s) which the replacement route needed to fulfil. She drew attention, inter alia, to the information received through the consultation process – noting, in particular, the questions asked on the round 1 consultation questionnaire,¹⁹⁹ which included '*For what purpose do you use the crossing?*' and '*For what purpose do you most often use the crossing?*'
- 3.5.5.9. She explained, again on a number of occasions, why she did not consider that origin and destination surveys undertaken at the crossings would have materially contributed to Mott MacDonald's understanding of how the crossing was used and for what purposes. It is notable that, save potentially with the exception of Mr Smy who stressed the use of Newmarket Town Football Club as the local polling station, no one identified any purposes for which a particular crossing was used which had not been considered by Mott MacDonald in developing the Order proposals.
- 3.5.5.10. Fourthly, and critically, what appeared to underpin many of the concerns raised as to whether a particular route was 'suitable and convenient' was based on the 'route' or conditions of that route as they stand on the ground today.
- 3.5.5.11. In Network Rail's judgement, that is not the right basis on which to assess the proposals. Section 5(6) is clear, in order to justify extinguishment of a PRoW, the Secretary of State must be satisfied that a (suitable and convenient) alternative right of way has been or will be provided.
- 3.5.5.12. It is common ground that detailed design is yet to be undertaken. In Network Rail's view, at that stage, any concerns relating to usability of verges and/or need for vegetation cut-back or profiling; to the

¹⁹⁹ Appendix 4 to Mr Kenning's PoE (NR/30-2)

profiling, cross-fall, and/or surfacing of proposed new footpaths; and any associated matters (such as drainage and/or additional signage) can and will be addressed. The new PRowS created under the Order are required to be constructed to the reasonable satisfaction of the Highway Authority; failing which it, the Highway Authority, can refuse to certify the PRow which, in turn, would preclude the crossing being closed. Any works in the highway will be subject to the oversight of the Highway Authority. It is agreed between Network Rail and SCC that any works required to a highway forming part of a diversionary route must be carried out before the crossing is closed.²⁰⁰

- 3.5.5.13. Ms Tilbrook's evidence was to the effect that she is satisfied that appropriate solutions can be found for the issues which had been identified by objectors to particular proposals through that detailed design process.²⁰¹ No one has seriously suggested that solutions to those issues cannot be provided. The complaint, in reality, is that the detail to be provided through the detailed design process, has not been provided yet. For the reasons set out above, Network Rail considers that is clearly not a valid basis to conclude that a suitable and convenient alternative 'will not be provided' for the purposes of section 5(6).

Equality

- 3.5.5.14. There has been some discussion, during the course of the Inquiry, as to how Network Rail has looked at the potential 'equalities' impacts of the proposed closures, by reference to the Public Sector Equality Duty under section 149 of the *Equality Act 2010*.
- 3.5.5.15. Network Rail considers that any suggestion there has been a failing on its part to comply with its duties under that section is without merit.
- 3.5.5.16. The evidence is clear: Network Rail has considered equalities issues at each stage of the process. The need for diversity impact assessments is identified in the Strategy. A Diversity Impact Assessment (DIA) scoping exercise was carried out by specialists within Mott MacDonald during 2016.²⁰² DIAs for S20 (Beecroft – subsequently removed from the Order), S21 (Abbotts), S22 (Weatherby) and S69 (Bacton) were prepared by equality specialists during 2016: the first versions being provided in December 2016.²⁰³ DIAs for S16 (Gislingham) and S24 (Higham Ground Frame) were prepared during 2017. A DIA for S25 (Cattishall) was prepared separately within Network Rail, covering both

²⁰⁰ In the side agreement, see NR/INQ/122.

²⁰¹ Mr Kenning explained in evidence how Network Rail anticipated that process would proceed: this is encapsulated in NR/INQ/20

²⁰² NR/INQ/38

²⁰³ See para 2 of NR/INQ/80 (the Note provided by Network Rail earlier in the Inquiry outlining the procedures surrounding production of the DIAs in light of questions raised as to who had authored them / Network Rail's involvement in the same)

the proposed bridge scheme and the Order proposals.²⁰⁴ Ms Tilbrook explained in evidence how that work has informed the consideration, and assessment, of the Order proposals.²⁰⁵ It is simply unarguable that there has been a failure to 'have regard', which is the duty in section 149.

3.5.5.17. In any event, the duty to 'have regard' in fact rests with the decision-maker in this context: namely, the Secretary of State. No doubt in discharging that duty, the Secretary of State will wish to have regard to the totality of the evidence, including for example, the evidence as to equalities issues arising from the crossing proposed for closure, and the PRoW leading to and from the same²⁰⁶, and any points raised by objectors as to matters they say were not or should have been considered will be looked at in that light. It goes without saying that Network Rail does not accept there were 'deficiencies' in its assessment, or the criticisms made of the same.

3.5.6. **S01 - Sea Wall**

Statement of Matters 4 (SoM4)

3.5.6.1. Network Rail has identified that the level crossing has an ALCRM score of C5. A 9-day camera census undertaken during September/October 2016 at the crossing recorded 98 pedestrian users. 18 people provided feedback on the use of the crossing during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that it provides leisure and recreational access to the local footpath network for a moderate number of people on a regular basis.²⁰⁷

3.5.6.2. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.

3.5.6.3. At S01, Network Rail's proposal is to divert users of the crossing on the northern side of the crossing to an existing footbridge to the east using the existing PRoW network. Once over the railway, users could continue south then east on existing Footpath 12 Brantham or turn west along a new PRoW which then turns south to connect into existing Footpath 13 Brantham running east along the sea wall. The Order proposals would extinguish a section of Footpath 13 Brantham to the north of the railway and a section to the south of the railway, running along the sea wall. The diversion route would use parts of, but does not affect, a section of the Stour and Orwell Walk (a Long-Distance Path).²⁰⁸

²⁰⁴ Copies of the DIAs can be found at Tab M of Ms Tilbrook's Supplementary Appendices (NR/INQ/15) A copy of the 'Equality and Diversity Overview Report' (also prepared by Mott MacDonald) can be found at Tab L of those Supplementary Appendices.

²⁰⁵ In section 1.16 of her PoE & in XIC

²⁰⁶ As discussed in the Overview Report, the DIAs, at paras 63 – 72 of the Statement of Case (NR26) and in Mr Brunnen's PoE at paras 7.4 – 7.6 and 9.8-9.13

²⁰⁷ NR/32-1 section 2.1.

²⁰⁸ ST PoE para 2.1.19. A plan of the Stour and Orwell Walk is at NR/INQ/48

SoM4 (e)

- 3.5.6.4. The Order proposals are adjacent to, and at points marginally within, the Stour & Orwell Estuary SSSI, which is largely coincident with an SPA/Ramsar Site.²⁰⁹ The Order proposals have been the subject of an HRA Stage 1 Screening Report²¹⁰ which concluded that 'no direct impact in terms of habitat loss is anticipated on any European site from the proposed Project. No likely significant effect alone or in combination can be concluded during the construction and operational phase of the new footpath.'²¹¹ It is common ground between Network Rail and SCC that the recent Court of Justice of the European Union decision in *C-323 People Over Wind v Coillte Teoranta* does not affect the reliability of the screening assessment.
- 3.5.6.5. Network Rail confirms that Natural England (NE) were consulted on the Order proposals and did not raise any concerns about the impact of works being carried out within or adjacent to the SSSI.²¹² NE did, however, welcome the proposal to extinguish the section of Footpath 13 Brantham running south from the level crossing, due to concerns that a proposed housing development to the north could result in increased footfall adjacent to the SSSI if the section of footpath were to be retained.²¹³ Mott MacDonald's ecologists had also raised concerns regarding the proximity of the footpath to the reed bed habitat area to the south west of the proposed new section of footpath running south to join Footpath 13 Brantham on the sea wall (specifically, the potential for dogs to encroach into the reed bed habitat area).²¹⁴ Fencing has been provided for in the proposal to mitigate this concern. Removal of the section of Footpath 13 running south from the level crossing would also reduce the potential for disturbance of birds in this reed bed habitat area through having a PRow on each side, a concern which Mr Kenning fairly acknowledged in XXC on Day 16 he had erroneously attributed to NE in his earlier evidence.²¹⁵

The diversion

- 3.5.6.6. The proposed diversion, referred to above, would add up to around 490 metres to the route.
- 3.5.6.7. The objections at Inquiry to the Order proposals were two-fold. The Ramblers' Association²¹⁶ and SCC²¹⁷ both objected to the proposed

²⁰⁹ An ecological constraints plan is at NR/INQ/40

²¹⁰ NR/INQ/82(e)

²¹¹ Executive Summary, 4th para

²¹² See, inter alia, NR/INQ/82 Appendix 1 (A NE briefing note) and NR/INQ/112 which confirms that it was clear from the material provided to NE that the Order proposals fell within (and not merely adjacent or proximate to) the SSSI and that NE were aware of the same.

²¹³ ST PoE para 2.1.24. See also para 26.3 of the Technical Note on Environmental Assessment at S01 and S02 (NR/INQ/82)

²¹⁴ Ms Tilbrook PoE 2.1.24, and XXC in response to questions from Ms Golden (Day 9)

²¹⁵ On Day 9

²¹⁶ Mr Knight – OBJ/36/W6/1

²¹⁷ Annette Robinson – OBJ/29/W3/S01

extinguishment of the section of Footpath 13 running south from the level crossing to the sea wall. SCC were also not satisfied that the proposed new footpath to the south of the railway would be suitable and convenient, by reference to concerns over ground conditions, including standing water. Mrs Robinson confirmed in XXC²¹⁸ that her concerns as to whether the route was suitable and convenient was limited to those matters, and SCC was not saying the 'route' would not be suitable for any other reason. Mr Knight (for the Ramblers' Association) raised similar concerns.

- 3.5.6.8. As to the concerns regarding ground conditions, and whether the alternative PRoW to the south of the railway will be 'suitable and convenient', Ms Tilbrook addressed this in detail in her evidence.²¹⁹ She explained how the route had been adjusted to address some of those concerns; how this would be considered further during detailed design; and the scope within the Order for mitigation, such as different surfacing solutions if that were considered to be required at that detailed design stage. As she made clear,²²⁰ she considered the proposals were feasible, there would be an engineering solution to any water/drainage issues,²²¹ and that the proposed route was in the right location, although there might be a few issues to overcome in detailed design. She was "*confident*" those issues could be resolved at detailed design stage, and that the path could be made suitable.²²² It should also be noted that Network Rail would also not be able to close S01 until the new PRoW was completed to the reasonable satisfaction of SCC as Highways Authority.²²³
- 3.5.6.9. Mrs Robinson accepted in XXC that in looking at whether the alternative route was 'suitable and convenient', what had to be looked at was whether such a route would be provided, not just the situation on the ground today. She accepted that the TWAO process was qualitatively different from a diversion under the Highways Act 1980 in that regard (which, once confirmed, would bring the PRoW into existence); and that there was a detailed design process which would pick up on specifics. She confirmed that she was not putting forward a positive case that issues she had raised regarding ground conditions /saturation could not be overcome – "*I'm not saying they can't be, I am just not satisfied at the moment*". Mr Knight similarly did not suggest that it was not possible for those issues to be overcome.²²⁴

²¹⁸ Day 9

²¹⁹ PoE 2.1.30, Rebuttal Proof of Evidence for S01 Sea Wall (NR/32-4-3) paras 2.1.1-2.1.7, XIC & XXC on Day 9

²²⁰ In response to Ms Golden questions on Day 9

²²¹ Ms Tilbrook (ST) explained in XXC that she did expect to need any formal drainage here (having regard to where the route had been located in relation to the swamp/reed beds) and that if there were areas where it was needed to remove water, they had the ability to adjust levels to raise the level of the path so it would sit outside any standing water.

²²² XXC in response to Ms Golden questions

²²³ Pursuant to the certification process in Article 16 of the Order

²²⁴ Question in XXC "You have heard [Ms Tilbrook] say it will be looked at carefully in detailed design if the order is confirmed – and I don't understand from you that you don't think it is possible to create the path" Answer: "I am not in a position to judge – I am a bit gung ho – I will just go through" irrespective of the ground conditions.

- 3.5.6.10. Network Rail maintains, therefore, that the Secretary of State can be satisfied that a suitable and convenient alternative route will be provided for users of the crossing. Closure of S01 may properly be confirmed within the Order, with or without the modification to retain the section of footpath 13 to the south of the crossing, which is dealt with below.²²⁵

SoM6

- 3.5.6.11. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

*Objector proposed alternatives*²²⁶

- 3.5.6.12. As regards the proposed extinguishment of footpath 13 south of the level crossing, that proposal took cognisance of the response received from NE that it welcomed the proposed extinguishment, due to concerns as to increased footfall on that area adjacent to the SSSI.²²⁷ Ms Tilbrook explained in evidence²²⁸ that such increased footfall could arise from that section of Footpath 13 effectively becoming a 'there and back route', as opposed to the opportunity for a circular walk that exists using S01 at present. It is notable in this respect that the HRA Screening Report identified that *'during operation the impacts of human disturbance will be reduced as users are diverted away the SPA.'*²²⁹ It was clearly appropriate for Network Rail to give substantial weight to the views of NE: the statutory body responsible for SSSIs, SPAs and Ramsar Sites in England²³⁰ when considering the proposals to take through to the Order.
- 3.5.6.13. Following discussion during the Inquiry as to whether the Order could (or should) be modified to retain the section of Footpath 13 to the south of the level crossing, Network Rail again sought the views of NE: specifically, whether it would object to the retention of Footpath 13 if the Order were to be so modified. By email dated 24 April 2018, NE responded that they would not object to the footpath remaining open.²³¹

²²⁵ The modification to retain footpath 13 would constitute an amendment to the extent of PRoW to be extinguished under the Order: its retention would not affect – at least negatively – the assessment of the alternative route for existing users as being suitable and convenient.

²²⁶ NR/32-2 pages 179 and 191.

²²⁷ See e.g. ST PoE para 2.1.24

²²⁸ XXC in response to questions from Ms Golden on Day 9

²²⁹ The second page 4 of the Report

²³⁰ Mrs Robinson accepted in XXC that Natural England had a particular status in the context of designated sites, SPAs and Ramsar sites, and that as statutory consultee that their views should be taken into account by the Inspector

²³¹ NR/INQ/108

- 3.5.6.14. Mott MacDonald has also appraised whether retention of the footpath would result in any different or significant effects, which might affect the conclusions of the HRA or EIA Screening Report. In a Technical Note dated 9 April 2018,²³² Mott MacDonald confirmed that the change would not give rise to 'a different (i.e. significant), or in combination effect and therefore the outcome of the HRA/Ecological Constraints Assessment would not change.' It was noted, however, that the benefit of the order proposals, regarding the positive effect on disturbance to birds referred to in the HRA Screening Report, would not be achieved if this section of footpath were to be retained.
- 3.5.6.15. In light of those developments, Network Rail confirmed, on Day 24 of the Inquiry, that it is content for the Order to be modified as proposed by SCC,²³³ and has provided (1) a revised filled Order and (2) amended Order plans to the Secretary of State reflecting this position.
- 3.5.6.16. A number of criticisms were made of Network Rail's approach to, and case for, the proposed extinguishment of Footpath 13 during SCC's closings. It goes without saying that Network Rail does not accept that its case 'appeared misleading at best'. The time line of events is set out above. When the proposals were being developed, the advice received by Network Rail was that NE would welcome the extinguishment of the southern section of Footpath 13. As the statutory body responsible for SSSIs (etc), it was clearly reasonable for Network Rail to give significant weight to those views. It appears that NE's view has changed. That position has been communicated to the Inquiry and acted on by Network Rail.
- 3.5.7. **S02 - Brantham High Bridge**
SoM4
- 3.5.7.1. Network Rail has identified that the crossing had an ALCRM score of C6 before it was temporarily closed. A 9-day camera census undertaken during September/October 2016 at the crossing recorded 8 pedestrian users. 13 people provided feedback on the use of the crossing during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that, when open, it provides leisure and recreational access to the local footpath network for a small number of people on an infrequent basis.²³⁴
- 3.5.7.2. The crossing at S02 is currently closed under a Temporary Traffic Regulation Order due to safety concerns. Those concerns relate to the sighting at this crossing, there is very limited sighting on the western side, and concerns that the crossing was at a point at which trains cross in very close proximity, with the potential for a train horn to be sounded

²³² NR/INQ/83

²³³ As shown on OP/INQ/96

²³⁴ NR/32-1 section 2.3.

at a whistle board as another train was passing, leading to a user potentially proceeding to cross after the first train had passed.²³⁵

- 3.5.7.3. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.

OBJ/52-The Royal Mail Group Limited

- 3.5.7.4. The Royal Mail Group Limited (RMG) has raised a concern that the temporary road closure of the A137 may affect its ability to meet its obligations. Whilst Network Rail may require a temporary single lane closure to facilitate those works, it is not envisaged that the road would be closed completely at any time. Further east of the railway Network Rail proposes to create a diversion over the existing private road from The Street.²³⁶

The diversion

- 3.5.7.5. Users would be diverted along a mix of new footpaths, existing footways, a private road and an unmade lane. The diversion would add up to around 675 metres to the route.
- 3.5.7.6. The concerns raised by SCC at S02 were not dissimilar to those at issue on S01. Specifically, Mrs Robinson's concerns focussed on where, precisely, the route running north towards the eastern side of S02 was proposed to be located (there being some concern about the apparent width of land between two existing fences) and the suitability of the path to be provided, by reference to ground conditions, the stability of the existing railway cutting adjacent to the proposed new PRoW, and cross-fall.
- 3.5.7.7. Mr Kenning confirmed in XIC where the footpath was proposed to be located in terms of the fencing, noting that the 'second fence' (i.e. that not on Network Rail's boundary, 1.5 metres from the proposed centre line of the new footpath) had been erected by the landowner slightly within his own land boundary, which would be moved to enable the footpath to be provided (i.e. the footpath was not proposed to be located within the narrow gap between existing fence lines). Mr Kenning also confirmed, in XIC, that the proposed route only entered Network Rail land in the vicinity of the level crossing: "*not where there is any instability on embankment or cutting or anything like that.*"
- 3.5.7.8. Ms Tilbrook again provided detailed evidence as to why she was satisfied that the alternative PRoW to be provided under the Order proposals would be suitable and convenient.²³⁷ She addressed, specifically, concerns about the stability of the railway cutting to the west; and the gradient, cross-fall and long fall of the proposed route, by reference to the conditions of the network of which it formed part. She confirmed, in

²³⁵ A Kenning in XIC Day 9

²³⁶ NR26 page 50, NR/INQ/36.

²³⁷ PoE section 2.2; Rebuttal PoE for S02 Brantham High Bridge (NR/32/4/4) paras 2.2.1 - 2.3.5, XIC (Day 9) XXC (Day 10)

XXC, that she was *'satisfied that the new footpath in that location is not going to put any additional loading in that embankment. Works will be done to ensure the footpath is in suitable condition, so SCC are happy to certify and [for the] level crossing [to be] closed. ... In terms of installing a footpath, that will not increase erosion on top of that embankment, it won't add to the cause of that at the moment. I am satisfied that it can be suitable to the satisfaction of SCC'*.

- 3.5.7.9. Network Rail considers that evidence was, again, not seriously challenged. Mrs Robinson maintained her concerns, but acknowledged, in XXC²³⁸ that she did not have a highway engineering background and her evidence on loading was *"not a technical opinion – I just know ground is unstable"*.
- 3.5.7.10. Mrs Robinson also confirmed, in XXC, that she believed practical issues, relating to cross-fall and surfacing; *"can be overcome"* and again agreed that this was a different process to that under the Highways Act and that the new PRow would not come into (legal) existence until certified by the Highways Authority.
- 3.5.7.11. In terms of whether a suitable and convenient route can be delivered in this area, Network Rail submits that the evidence of Ms Tilbrook and Mr Kenning should clearly be preferred: particularly when considering the issues relating to land stability and erosion. Those concerns must, in particular, be considered in the following context: Network Rail is not proposing the creation of a footpath on the top (or at the edge) of an unstable embankment: it is proposing creation of a footpath set back from, and separated by fencing, the 'edge' of a cutting accommodating the operational railway.
- 3.5.7.12. Mr Knight's concerns were directed primarily to the proposed use of the footway along the A137 as part of the east – west diversion route. He agreed, in cross-examination, that the A137 had a footway along it, that Mr Russell had not identified any issues in respect of the same,²³⁹ and that in order to reach Footpath 6 Brantham from the south today²⁴⁰ it was necessary to interact with the A137, and to use some elements of the road to reach its southern end from the wider PRow network. He fairly accepted that there would be some improvement to the route between Footpath 6 Brantham and Footpath 001 Bentley (to the north east of the crossing) through the provision of a new tarmac footway along that section of the A137. He also agreed, having expressed reservations about the new PRow to the west of the railway creating a route around *"the third side of a rectangle"*²⁴¹ that users would have a choice of using this route or the A137 – so if taking a scenic route, a walker could go around the wood, or if taking a quicker route, take the A137.

²³⁸ On Day 16.

²³⁹ The stage 1 RSA commissioned by Network Rail also did not identify any issues with the use of this part of the A137 – ST PoE para 2.2.30

²⁴⁰ The section to the west of the crossing

²⁴¹ Mr Knight's PoE para 6

- 3.5.7.13. Network Rail maintains that the Order may properly be confirmed without modification.

SoM6

- 3.5.7.14. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

*Objector proposed alternatives*²⁴²

- 3.5.7.15. OBJ/62's suggestion that a more direct route be taken from the end of The Street to tie in between P149 and P150 was assessed, but not taken forward, due to the impact it would have on higher amenity private gardens. In Network Rail's view, there was no compelling case in the public interest to take rights over that private land, as the Order route would be suitable and convenient. As to OBJ/62's concerns with respect to the potential impact of the proposals on trees, further investigations would be undertaken at detailed design stage.
- 3.5.7.16. The alternative route, suggested by OBJ/62, in fields adjacent to the A137 was shown in the round 1 consultation²⁴³. That route was not taken forward due to the increase in road walking which would be required from the layby to the existing footway opposite The Street and the need to use a longer length of private fields compared to the Order route.
- 3.5.7.17. With reference to OBJ/44, the section of Footpath 006 Brantham between P153 and P145 is to be retained due to its amenity value, passing through woodland, as supported by SCC. Signage would be erected to inform users that there is no onward route beyond P145.

3.5.8. **S03 - Buxton Wood**

SoM4

- 3.5.8.1. Network Rail has identified that the crossing has an ALCRM score of C7. A 9-day camera census undertaken during September/October 2016 at the crossing recorded 11 pedestrian users. 12 people provided feedback on the use of the crossing during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that it provides leisure and recreational access to the local footpath network for a small number of people on a relatively frequent basis.²⁴⁴

²⁴² NR/32-2 pages 189 and 190.

²⁴³ NR/32-2 pages 190 and 61.

²⁴⁴ NR/32-1 section 2.3.

- 3.5.8.2. Mr Kenning explained, in XIC,²⁴⁵ how S03 would need to be removed in order for any improvement at Bentley Station (for example, as a result of 'Norwich in 90') to go ahead. He explained, specifically, if a full barrier were installed at Bentley Station, locating the signals for that barrier at the optimum position (about 200m from the crossing) would put the signal between Bentley Station and Buxton Wood, with the result that passenger trains would end up 'parked' over S03, with freight trains possibly 'parked' over Falstaff as well. He also explained that Falstaff level crossing, due to its location, and its connection with the wider east west links, is "*very unlikely*" to be diverted anywhere, and that Network Rail couldn't divert Falstaff to Buxton Wood as they don't have the same level of connectivity.
- 3.5.8.3. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.
- 3.5.8.4. Network Rail's proposals at this crossing are to extinguish the section of Footpath 022 Bentley passing over the crossing from Footpath 021 Bentley to the northwest of a field edge southeast of the crossing, and to create a new PRow on the eastern side of the railway from the point where Footpath 021 Bentley is extinguished up to Footpath 019 Bentley in the north, where an existing footpath level crossing (Falstaff) can be used to cross the railway. The proposed diversion would add around 330 metres to the route.²⁴⁶
- 3.5.8.5. The proposed new footpath would be located within land known as 'Eleven Acres' owned by Mr Caldwell. Ms Caldwell, giving evidence in support of her father's objection, questioned the need for crossing S03, given the proximity of Bentley Station and the Falstaff crossing; raised concerns as to the impact of the new footpath on the landholding, and put forward two alternative routes: both along the eastern side of the railway, one wholly within Network Rail's land, the other within Mr Caldwell's landholding.
- 3.5.8.6. The challenge to Ms Tilbrook's evidence that the alternative right of way proposed in the Order was suitable and convenient was essentially limited to the contentions advanced in paragraph 3.2.5.11 of the closing submissions of OBJ/60²⁴⁷. It is notable that those submissions are advanced by way of comparison with the proposed alternatives.
- 3.5.8.7. An issue as to the location of the proposed footpath was identified during the Inspector's site visit, based on a measurement taken from the electricity pylon, at the north western section of the proposed new route. Mr Kenning has revisited the site to investigate this point, and identified a discrepancy between the dimensions and orientation of the pylon as shown on the Order plans (taken from OS mapping) and that on the ground: in particular, the width of the pylon is shown on the OS

²⁴⁵ Day 10

²⁴⁶ NR/32-1 para 2.3.9.

²⁴⁷ OP/INQ/103.

as 6m, whereas the width, on site, is 4.5m. This is set out in the Note provided to the Inquiry on Day 24,²⁴⁸ as amplified orally by Mr Kenning. As set out in that Note, Network Rail remains confident that a suitable and convenient footpath can be provided on the alignment of the proposed route, as shown on sheet 33 of the Order plans.

SoM6

- 3.5.8.8. Mr Billingsley explained in evidence what he understood the potential impacts to be on Mr Caldwell's landholding (as did Mr Kenning), and how those impacts might be compensated through the compensation provisions in the Order. Ms Tilbrook acknowledged, in cross-examination, that the impact of the Order route would be greater on the landholding than the Alternative B proposal (the green route),²⁴⁹ and that the impact on landowners had to be, and had been, taken into account. However, that had had to be balanced against the need for certainty as to deliverability of the alternative route. In Network Rail's view, the balance has been struck correctly.
- 3.5.8.9. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected. Network Rail maintains, therefore, that the Order may properly be confirmed without modification.

²⁴⁸ NR/INQ/121.

²⁴⁹ It would clearly be greater than 'Alternative A' which would move the footpath from Mr Caldwell's land onto Network Rail land.

SoM10

*Objector proposed alternatives*²⁵⁰

- 3.5.8.10. Mr Kenning also explained, in XIC, Network Rail's concerns with the suggestion that the new PRoW instead be located within Network Rail's land (Ms Caldwell's 'Alternative A'). He highlighted as particularly undesirable the effective creation of a 'corridor' between the operational railway and the railway embankment which Network Rail would need to maintain. It was also considered likely to require some 'cutting' into the railway embankment at the northern end. Ms Tilbrook also addressed this in her evidence.²⁵¹
- 3.5.8.11. 'Alternative B' is the 'green route' which had been considered at the round 1 consultation²⁵² but discounted before the round 2 consultation due to concerns resulting from standing water.²⁵³ As Mr Kenning explained²⁵⁴, there were concerns about the ability to provide a solution all year round because of the wet spot. Unlike other areas where Network Rail believes it can engineer a solution to deal with occasional standing water, the problem it has here is that it has been unable to identify the origin, and the fact that it is wet even at high summer suggested a spring. The ramifications of dealing with that led to the September plan changes from the original green route.
- 3.5.8.12. Ms Tilbrook confirmed, in evidence,²⁵⁵ her concerns with the proposed alternative resulting from the lack of certainty as to the cause of the issue; that it was thus unknown what solution might be satisfactory; and the consequent uncertainty of delivering the solution. She explained why, absent of evidence of what was causing the issue, she could not be confident that measures proposed by Les Cotton Contractors Ltd²⁵⁶ (specifically, using a geotextile membrane patch) would solve the issues which were impacting on the suitability of the Alternative B route. Network Rail certainly does not share the confidence expressed at paras 3.2.5.8 of Mr Caldwell's closings²⁵⁷.
- 3.5.8.13. It was clear, from Ms Caldwell's evidence, that the objector's frustrations stemmed, at least in part, from a long-held belief that the wet spots were as a result of drainage problems which had been caused when the railway was electrified during the early 1980s.²⁵⁸ This was reiterated in Closing (para 3.2.5.7). There is an indication in the evidence submitted by Mr Caldwell that this is the subject of ongoing (or pending)

²⁵⁰ NR/32-2 pages 196-197.

²⁵¹ Appendices Tab 7, page 196-7

²⁵² The round 1 consultation materials can be found at Appendix 2 pages 62-63 of Ms Tilbrook's Appendices

²⁵³ ST PoE para 2.3.19.

²⁵⁴ Day 10

²⁵⁵ XIC Day 10

²⁵⁶ Page 6 of Ms Caldwell's Appendices

²⁵⁷ OP/INQ/103.

²⁵⁸ Para 5 of Mr Caldwell's Statement (Appendix 1 to Ms Caldwell's Proof)

litigation.²⁵⁹ It is clearly a long-standing issue from which it is submitted it may be inferred that there is not a simple solution.

- 3.5.8.14. It was clear that there was also frustration that Mr Caldwell had not been consulted by Network Rail earlier in the process. Mr Kenning acknowledged that Mr Caldwell (an unregistered landowner) had not been identified at the round 1 consultation stage. He noted, however, that a response had been provided on Mr Caldwell's behalf during the round 2 consultation. Ms Caldwell accepted, very fairly, in cross-examination that Network Rail had clearly been aware of the issues relating to the landholding before it lodged its application in March 2017. Mr Billingsley explained in evidence the processes which had been followed by Network Rail's land agents to identify affected landowners. The submission, made in Closings, that Network Rail was "*negligent*" in failing to identify him as owner of the land is roundly rejected.
- 3.5.8.15. Whilst the wish to have been consulted earlier is clearly understandable, this is not a case where there can be any certainty that earlier engagement would have resulted in either of the alternatives having been promoted by Network Rail. As Ms Caldwell acknowledged in cross-examination, the drainage issues on this land are clearly of long-standing duration. In response to the question that "*if there was a clear and obvious cause, we might have expected to have found that by now*" she acknowledged that it was "*an unresolved matter, we have instead devoted our efforts to this*". She also acknowledged that even with earlier engagement, the parties might not have been any further along with the cause of the problem. As set out above, Network Rail has significant concerns in respect of both Alternatives, and thus would not support the modification to the Order sought by Mr Caldwell in closing.
- 3.5.9. **S04 - Island**
- 3.5.9.1. In the absence of other parties at the Inquiry with a particular interest in S04, Network Rail's written evidence was taken as read and points of clarification sought by the Inspector were responded to in writing.
- SoM4**
- 3.5.9.2. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9-day camera census undertaken during June/ July 2016 at the crossing recorded 39 pedestrian users. 9 people provided feedback on the use of the crossing during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that it provides leisure access to the local footpath network for a relatively small number of people on a relatively frequent basis, with some use as access to local facilities.
- 3.5.9.3. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.

²⁵⁹ Pages 15-18 of the Appendices to Mr Caldwell's Statement of Case (OBJ/SoC/60)

OBJ/52-The Royal Mail Group Limited

- 3.5.9.4. The RMG has raised a concern that the temporary road closure of Church Road/Bentley Bridge may affect its ability to meet its obligations. Network Rail does not believe that the proposed pedestrian improvement measures would affect the ability of the RMG to carry out its duties. The proposed works to the footpath to enable pedestrians to navigate around the vehicle restraint barriers on the approaches to the bridge would be implemented by SCC. They are not considered to be major works and should not prevent vehicles passing.²⁶⁰

The diversion

- 3.5.9.5. Users would be diverted onto new footpaths on either side of the railway leading to a crossing over Bentley Bridge. The proposed diversion would add around 600 metres to the route.²⁶¹

SoM6

- 3.5.9.6. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector proposed alternatives²⁶²

- 3.5.9.7. OBJ/21 suggested that vehicle restraint barriers which are to be installed on the highway approaches to Bentley Bridge should be positioned instead alongside the railway boundary. However, the provision of those barriers is not included in the Order, it forms part of an ongoing local authority safety scheme, prompted by a fatal crash at Selby in 2001. Design standard requirements dictate the position of the proposed barriers.

3.5.10. **S07 - Broomfields**

- 3.5.10.1. Following discussions with SCC and the landowner concerning the alignment of Footpath 11 approaching S07²⁶³, Network Rail has decided to remove this crossing from the Order. Details of the associated modifications have been provided²⁶⁴.

²⁶⁰ NR/INQ/36.

²⁶¹ NR/32-1 section 2.4.

²⁶² NR/32-2 page 178 and NR/INQ/99.

²⁶³ NR/INQ/86.

²⁶⁴ NR/INQ/128.

3.5.11. **S08 - Stacpool**

SoM4

- 3.5.11.1. Network Rail has identified that the level crossing has an ALCRM score of C5. A 9-day camera census undertaken during June/ July 2016 at the crossing recorded 39 pedestrian users. 10 people provided feedback on the use of the crossing during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that it provides leisure and recreational access to local amenities for a relatively small number of people on a regular basis.
- 3.5.11.2. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.
- The diversion*
- 3.5.11.3. Users would be diverted along the eastern side of the railway on a new footpath from S08 northwards for around 40 metres to Footpath 031 Needham Market and thereafter following that footpath in a westerly direction across an existing overbridge to a highway footway along the B1113.
- 3.5.11.4. Mr Crosby was the sole objector who appeared for this crossing. He did not take issue with Network Rail's assessment of the proposed diversionary route as a suitable and convenient replacement for the users assessed in para 2.6.14 of Ms Tilbrook's PoE (which identified the level crossing as providing a generally east/west route, the proposed replacement maintaining that east/west connectivity). His concern was that it did not provide a suitable and convenient alternative for people, like himself, who parked in the layby to the south of the level crossing and used (or might in future use) the level crossing to access the nature reserve being developed on the quarrying site(s) to the east of the railway. Mr Crosby was concerned, in particular, as to the need to walk along the B1113 to access the bridge which would take users to the eastern side of the railway, and proposed that a new footpath be provided along the western side of the railway corridor (along an existing haul road) to provide an off-road route for those parking in the layby.
- 3.5.11.5. Mr Kenning explained in cross-examination that the possibility of a 'there and back' route, with PRoWs provided on both sides of the railway, had been discussed with the highway authority and was not considered the most appropriate solution here. Ms Tilbrook confirmed in re-examination that provision of the route suggested by Mr Crosby "*would have served no purpose in linking to the PRoW network*", and that "*it was considered that making use of the existing right of way to the north was far more logical, and very difficult to justify taking private rights when we would not have been able to explain this alternative as convenient in terms of overall journeys people are trying to make.*"

- 3.5.11.6. Network Rail confirmed that the whole of the length of the B1113 about which Mr Crosby was concerned was considered by the Network Rail commissioned road safety auditors, who did not identify any issues.²⁶⁵
- 3.5.11.7. Mr Crosby's concerns as to the safety of walking along this longer stretch of the B1113, including as to widths of the pedestrian facilities alongside the carriageway, were reiterated in his Closings. Network Rail has provided a response to Mr Crosby's earlier concerns on footway widths and the need (or otherwise) for a separation distance between pedestrians and the carriageway by way of written submissions and does not repeat its contents here²⁶⁶. It would reiterate, however, that the concerns expressed by Mr Crosby relate to a section of the B1113 which is not included in the Order proposals as the alternative route for users of the level crossing. Furthermore, a Road Safety Audit has been undertaken, which did not identify any issues with use of the footway. In addition, it would be open to the Highway Authority to undertake road safety improvements, if they deemed it necessary to resolve known issues such as accident blackspots or in relation to matters where persistent public concerns have been raised. SCC has confirmed to Network Rail that it has no such reasons to carry out works on the footway alongside the B1113. These are not, therefore, matters which undermine the suitability of the replacement route proposed under the Order.

SoM6

- 3.5.11.8. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector proposed alternatives

- 3.5.11.9. Mr Crosby has suggested that a new footpath would also be required on the southwestern side of the railway linking Footpath 031 Needham Market to Footpath 033 Needham Market. Network Rail considers that it would not be required, as the aim of the footpath network in this location is to walk west/east and the Order proposal would maintain this connectivity. Under these circumstances there would be no compelling case in the public interest to take the rights over third party land necessary to provide Mr Crosby's suggested route.
- 3.5.11.10. Network Rail does not support the modifications proposed by Mr Crosby for the reasons explained in evidence and at the 'Modifications session'.²⁶⁷ The Order may properly be confirmed without modification.

²⁶⁵ NR/INQ/64

²⁶⁶ NR/INQ/111 and NR/32-2 pages 186-187.

²⁶⁷ Day 24

3.5.12. **S11 - Leggetts**

SoM4

3.5.12.1. In the absence of other parties at the Inquiry with a particular interest in S11, Network Rail's written evidence was taken as read.

3.5.12.2. Network Rail has identified that S11 is a passive level crossing with an ALCRM score of C7. A 9-day camera census undertaken during June/ July 2016 at the crossing did not record any users. 3 people provided feedback during the first round of public consultation, confirming that the crossing is used. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that it is used very infrequently by a very small number of people to access the footpath network.

3.5.12.3. The Order would confer powers to close the crossing to all users and extinguish public rights of way over the crossing.

The diversion

3.5.12.4. Users would be diverted south along existing PRowS to Wassicks level crossing, which is an automatic half barrier crossing with an ALCRM score of C4. The proposed diversion route would add around 930 metres to the route.

SoM6

3.5.12.5. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

3.5.13. **S12 - Gooderhams, S13 - Fords Green, S69 - Bacton**

SoM4

3.5.13.1. Network Rail has identified that S12 has an ALCRM score of C7, for S13 it is C9 and for S69 it is C8. A 9-day camera census undertaken during June/ July 2016 at each of these crossings recorded the following results: S12-8 pedestrian users; S13-6 pedestrian users; and S69-27 pedestrian users. 4 people provided feedback on the use each of the crossings during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that: S12 is potentially primarily used for farm access and may provide leisure/recreational access to the local PRow network for a small number of people on an infrequent basis; S13 is potentially primarily used for farm access and may provide leisure/recreational access to the local PRow network for a small number of people on an infrequent basis; and, S69 is potentially used for access to the football club and may provide leisure/recreational

- access to the local PRow network for a small number of people on an infrequent basis during the week, with higher use at the weekend.²⁶⁸
- 3.5.13.2. The Order would confer powers to extinguish public rights of way over the crossings and to close S13 and S69. The proposal for S12 is to extinguish the PRow passing over the crossing but to leave the private vehicular rights unaffected. These three crossings were considered together at the Inquiry. The design solutions are, to a degree linked.
- 3.5.13.3. Mr Baker's primary concern was, understandably, the impact which creation of the new PRows would have on land in which he had an interest and/or which he used for the purpose of his farming operations. However, when assessing the impacts which would arise from the scheme, Network Rail considers it is important to bear in mind that the Order would not be introducing PRows into a landholding which had previously not been subject to rights of public access. Mr Baker stated that he took steps in respect of existing PRows to manage the risk of neosporosis. He accepted in cross-examination that he could apply the steps he applied to mitigate or manage risks to other sections of footpath. As set out earlier in Network Rail's submissions, compensation is available under the Order for losses resulting from creation of a new PRow on land not limited to the strip of land over which it passes but also '*land held therewith*'. This could include losses incurred as a result of managing or mitigating the impact of the PRow on the activities carried out on that land.
- 3.5.13.4. Against that background, Network Rail maintains that it has properly struck the balance here between finding the right solution for rationalising level crossings in this area, and the interests of the landowners affected by the same.
- 3.5.13.5. Mr Baker was also concerned about the proposal to create a short length of footpath to the west of Bacton, providing a link from Footpath 14 Bacton to the residential development at the south west of Bacton. This proposal would require the creation of a footbridge over a ditch to enable users to pass onto Pulham Lane: Mr Baker was concerned that this would prevent him using that lane for access with outsize agricultural vehicles. Ms Tilbrook confirmed in evidence that the footbridge would not obstruct the lane (save there would potentially be some restrictions during its construction) by reference to the Order plans,²⁶⁹ and that, having looked at the LiDAR data for this location, she was "confident" that the footbridge could be put to the side of the lane and would not obstruct it.²⁷⁰ Ms Tilbrook also explained in evidence that the proposed footpath would provide access to/from the housing development within Bacton to the PRow network to the south, reflecting that currently provided by Footpath 13 Bacton to the east, and why she

²⁶⁸ NR/32-1 section 2.8.

²⁶⁹ Specifically, the works inset on Sheet 21

²⁷⁰ In response to Inspector's questions, Day 14

did not consider the use of the existing street network to provide a suitable alternative²⁷¹.

SoM4 (f)-the diversion

- 3.5.13.6. In relation to S12, users of the PRow network would be diverted to Cow Creek level crossing to the north, via existing footpaths/highway, adding around 365 metres to the route²⁷². Network Rail confirmed by way of a Note²⁷³ that the closure of S12 and S13, and diversion of those users to Cow Creek, would not result in a change in its ALCRM score (albeit with a slight increase in its FWI). Mr Baker subsequently made a 'conditional withdrawal' of his objection in respect of S12; conditional upon the proposals being implemented as per the Order plans²⁷⁴.
- 3.5.13.7. In respect of S13, users travelling east/west would be diverted south to Cow Creek level crossing via a new PRow created to the west of the railway, connecting with Footpath 014 at S13, Footpath 18 at Cow Creek and then Footpath 020 Bacton; a diversion of around 1,450 metres. In addition, a new PRow would be created to the east of the railway, connecting with Footpath 14 Bacton at S13 and Footpath 13 Bacton at S69. As Ms Tilbrook explained in evidence, the new PRows would provide access for users wishing to travel east/west across the railway, greater options for pedestrian movement to the north and south, and maintain opportunities for circular walking²⁷⁵. Mr Kerr confirmed during his evidence²⁷⁶ that the proposed PRows were ones which SCC had wanted to see provided.²⁷⁷
- 3.5.13.8. In respect of the S69, users would be diverted to the existing underpass at Pound Hill via: Footpath 13 Bacton and the B1113 Broad Road to the east of the railway; and, Birch Avenue and a new footpath to the west. The diversion length from the east side of the crossing to Birch Avenue would be around 960 metres.
- 3.5.13.9. Objections primarily focussed on the proposed use of Pound Hill underpass as a crossing point of the railway and a short section of road walking along Broad Road. In terms of Pound Hill underpass, it is proposed²⁷⁸ to remove verge from both approaches to the bridge (eastbound side) and install a new footway to provide safe standing area for pedestrians; to cut back vegetation; and to clear vegetation from the road through the bridge and reinforce the pedestrian space at the side of the carriageway.

²⁷¹ NR/INQ/120.

²⁷² NR/32-1 para 2.8.14.

²⁷³ NR/INQ/41

²⁷⁴ OP/INQ/34.

²⁷⁵ ST PoE para 2.8.27, ST Rebuttal for S12, S13, S69 (NR/32-4-5) at 2.3.8, XIC Day 14

²⁷⁶ In response to a question from the Inspector

²⁷⁷ The proposals were amended between rounds 1 and 2 of consultation in light of feedback received from SCC: ST PoE 2.8.42 – 2.8.48

²⁷⁸ The proposals are detailed in Section 3.4 of the Design Guide (NR12) pages 32-33

- 3.5.13.10. This route is used by pedestrians at present. In Network Rail's view, the level of increased use resulting from the closure of S69 is not such as to warrant more extensive measures being implemented here; specifically, it would not justify the provision of a dedicated new footway and 'give and take' arrangements, proposed as part of a consented housing development on Broad Road.²⁷⁹
- 3.5.13.11. The recommendation of the RSA commissioned by SCC (whose auditors were not provided with copies of plans showing Network Rail's proposals through the underpass²⁸⁰) was that 'pedestrian facilities in the vicinity of Pound Hill railway bridge should be improved, within the constraints posed by the arch'²⁸¹ Mr Russell's view was that physical separation of the pedestrian space through the underpass should be provided, for example by way of kerb.²⁸² He agreed, in XXC, that his recommendation was 'not a showstopper'²⁸³ and it could be taken forward. Network Rail considers it is clear, therefore, that measures can be put in place to ensure that the underpass may safely be used by pedestrians diverted from S69.
- 3.5.13.12. As regards to concerns raised with respect to carriageway flooding, this is an existing problem affecting Pound Hill underpass today (both carriageway and the pedestrian space²⁸⁴). Clearly, and regardless of whose land or infrastructure is causing the issue,²⁸⁵ it will have to be resolved and indeed, would have to be resolved if the improvement works required as part of the housing development on Broad Road come forward. Ms Tilbrook is confident that the issue can be resolved at detailed design stage.²⁸⁶ No one has suggested it could not be.
- 3.5.13.13. In terms of the use of Broad Road, the concerns again related to the facilities available for pedestrians along the carriageway. Ms Tilbrook confirmed in XXC that whilst there were areas where the verges were overgrown, and could benefit from some cut-back, she was satisfied that there was a sufficient width of verge available to provide appropriate pedestrian facilities: "*I am confident we do not go below 700mm – I think the minimum is 900mm on a relatively short section*".²⁸⁷ She remained of the view that a 'formal footway' was not required.²⁸⁸ That was in line with the recommendation of the SCC commissioned RSA whose recommendation, again, was pedestrian facilities should be

²⁷⁹ ST PoE 2.8.50. It was stressed in evidence that that development would result in increased vehicular traffic through the bridge, and not just increased pedestrian use – cf the proposals to close the level crossing

²⁸⁰ Confirmed by Mr Haunton in XXC

²⁸¹ Stage 1 RSA for S69, Appendix 4 to Mr Haunton's Proof, page 226

²⁸² Para 4.107 of Mr Russell's PoE

²⁸³ Q "So your first recommendation not a showstopper – it could be taken forward" A "Yes from my perspective it could be taken forward and a scheme submitted". Day 14.

²⁸⁴ A Kenning in Re-IX

²⁸⁵ For the avoidance of doubt, Network Rail does not accept that it is an issue resulting or arising from Network Rail land or infrastructure (see e.g. NR/INQ/87) However, this question simply does not need to be resolved for the purposes of this Inquiry.

²⁸⁶ ST PoE para 2.8.55

²⁸⁷ XXC in response to questions from SR

²⁸⁸ In response to questions from MG

improved. Mr Russell confirmed in XXC that he was not suggesting there needed to be a metalled footway, but that “if [ST] is saying there is a 900mm path then I would be satisfied”.

- 3.5.13.14. Mr Baker also raised concerns about Pound Hill underpass and any works that might restrict his ability to access it with out-sized vehicles. Network Rail’s proposals do not involve reducing the width of the carriageway through Pound Hill underpass.
- 3.5.13.15. Network Rail maintains, therefore, that the Secretary of State can be satisfied that suitable and convenient alternative routes will be provided for users of crossings S12, S13 and S69 and that the Order may properly be made without modification

SoM6

- 3.5.13.16. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector proposed alternatives

- 3.5.13.17. Ms Tilbrook has appraised the various alternative proposals advanced by Mr Baker, and others objecting to the proposals in this location, and explained why she does not consider they would provide the connectivity achieved through the Order proposals.²⁸⁹ Other difficulties with the alternatives advanced were discussed during the Modifications session; not least, that reorganisation of the PRow network not required as a consequence of level crossing closure is simply not within the remit of this Order.²⁹⁰ Furthermore, as set out above the proposed new footpath on the western side of the railway between Cow Creek and S13 is required to provide greater options for pedestrian movement to the north and south, and maintain opportunities for circular walking. In addition, Mr Kenning confirmed in evidence²⁹¹ that keeping S69 open would not remove the need to provide the new PRow to the eastern side of the railway between S13 and S69.
- 3.5.13.18. In relation to S13/S69, OBJ/23 whilst acknowledging that some attempt has been made to reduce the use of B1113 for pedestrians, suggests it is essential that a proper footway is established along Broad Road for safety reasons. Network Rail takes the view that pedestrians already use the B1113 road and verges to reach the wider PRow network to the east

²⁸⁹ Tab 7, pages 194, 185 & 199,

²⁹⁰ Specifically, in relation to Mr Baker’s proposal that the proposed footpath running north from Cow Creek to S13 on the west side of the railway be removed, and a link instead provided by ‘moving’ Footpath 020 Bacton to run alongside the eastern boundary of the railway.

²⁹¹ Mr Kenning’s Rebuttal for S12, S13, S69 (NR30-4-6) para 7

of S69 and the Order proposal would continue that use. Furthermore, the proposed new footpath on the eastern side of the railway between S69 and S13 addresses the objector's concern. In addition, there have been no publicly recorded accidents involving pedestrians on this length of the B1113 between 1999 and 2017.²⁹²

3.5.13.19. Contrary to the view of OBJ/37, Network Rail considers it is necessary to retain the section of Footpath 013 Bacton to the east of the railway, as part of the north/south route required to mitigate the closure of S69, a view shared by SCC.²⁹³

3.5.14. ***S16 -Gislingham and S17 -Paynes***

SoM4

3.5.14.1. In the absence of other parties at the Inquiry with a particular interest in S16 and S17, Network Rail's written evidence was taken as read. A number of points of clarification raised by the Inspector were answered orally.

3.5.14.2. Network Rail has identified that S16 and S17 both have an ALCRM score of C8. A 9-day camera census undertaken during June/ July 2016 at S16 recorded 3 pedestrian users. A similar survey at S17 recorded 14 pedestrian users. 1 person provided feedback on the use of S16 and 3 people on the use of S17 during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that the crossings are used on an infrequent basis by a small number of people to access the local PRow network.²⁹⁴

3.5.14.3. The Order would confer powers to close the level crossings to all users and extinguish public rights of way over them.

The diversion

3.5.14.4. Users of S16 would be diverted using a mix of new bridleway as well as an existing byway open to all traffic (BOAT) and highway, crossing the railway at an underpass. For users wishing to access one side of the crossing from the other, the diversion would add around 1,340 metres to the journey. However, provision of a new bridleway would reduce journey distance for some other users, such as those travelling between Bridleway 023 Gislingham to the north and BOAT 022 Finningham to the south.

3.5.14.5. Users of S17 would be diverted using a mix of new and existing footpaths, crossing the railway at an overbridge. The proposed diversion would add around 970 metres to the route²⁹⁵.

²⁹² NR/32-2 pages 180, 188, 198-199.

²⁹³ NR/32-2 page 201.

²⁹⁴ NR/32-1 sections 2.9-10.

²⁹⁵ NR/32-1 para 2.10.10.

SoM6

- 3.5.14.6. With reference to S16, Network Rail wishes to withdraw the proposed powers over plot 5, having determined that it is not necessary to facilitate maintenance once the crossing is closed²⁹⁶. Furthermore, with reference to S17, it wishes to reduce the extent of the proposed powers over plot 2, such that it is only seeking a right of access over the extent of Coldham Lane that is not publicly maintainable²⁹⁷. Otherwise, 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.
- 3.5.14.7. In Network Rail's view, there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

3.5.15. **S18 -Cowpasture Lane**

SoM4

- 3.5.15.1. In the absence of other parties at the Inquiry with a particular interest in S18, Network Rail's written evidence was taken as read.
- 3.5.15.2. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9-day camera census undertaken during June/ July 2016 recorded 67 pedestrian users²⁹⁸.
- 3.5.15.3. It is proposed to downgrade the rights enjoyed over this crossing from a BOAT, which in this case is subject to a Prohibition of Driving Order, to bridleway. This change is supported by the Ramblers' Association.²⁹⁹

The diversion

- 3.5.15.4. There is no need for a diversion in this case, as the current usage would not change. Mounting blocks would be provided for the convenience of equestrians.

SoM6

- 3.5.15.5. Network Rail acknowledges that access across Mellis Common is not possible. However, Network Rail has a right of access to maintain the crossing from Chapel Farm Lane, to the east of the railway, which would be used to undertake the proposed works.³⁰⁰
- 3.5.15.6. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those

²⁹⁶ NR/INQ/67.

²⁹⁷ NR/INQ/67.

²⁹⁸ NR/32-1 para 2.12.4.

²⁹⁹ NR26 page 78.

³⁰⁰ NR/29/1 para 8.7.6.1.

powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

3.5.16. **S21 -Abbotts (Mellis)**

SoM4

3.5.16.1. In the absence of other parties at the Inquiry with a particular interest in S21, Network Rail's written evidence was taken as read.

3.5.16.2. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9-day camera census undertaken during June/ July 2016 recorded 26 pedestrian users³⁰¹. 9 people provided feedback on the use of S21 during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that the crossing is used on a regular basis by relatively small numbers of people to access the properties and services in and around the village of Mellis.³⁰²

3.5.16.3. There are no recorded public rights of way at this level crossing. The Order would confer powers to close the level crossing to all users and extinguish all private rights over it.³⁰³

The diversion

3.5.16.4. Users would be diverted along existing footpaths/highways to Mellis automatic half barrier crossing, which has an ALCRM score of D2³⁰⁴. The proposed diversion would add up to around 930 metres to the route from one side of the crossing to the other³⁰⁵.

SoM6

3.5.16.5. The Order makes provision for compensation for any loss of private rights as well as any loss or damage resulting from the exercise of powers of temporary occupation. Once the works are complete, Network Rail is obliged, under the terms of the Order, to reinstate land subject to temporary occupation to the reasonable satisfaction of the owners.³⁰⁶

3.5.16.6. Network Rail wishes to withdraw plot 7, as it has decided access from the eastern side of the railway would be sufficient to facilitate the works, negating the need for access across plot 7 to the west of the railway³⁰⁷. Otherwise, Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those

³⁰¹ NR/32-1 para 2.12.4.

³⁰² NR/32-1 section 2.12.

³⁰³ NR26 pages 79-80.

³⁰⁴ NR26 page 80

³⁰⁵ NR/32-1 para 2.12.10.

³⁰⁶ NR26 pages 40 and 80, NR/29/1 pages 41-43.

³⁰⁷ NR/INQ/67.

powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

3.5.17. **S22 - Weatherby**

SoM4

- 3.5.17.1. Network Rail has identified that the level crossing has an ALCRM score of D2. A 9-day camera census undertaken during June/ July 2016 recorded 3,595 users. 33 people provided feedback on the use of S22 during the first round of public consultation. Based on the location of the crossing point, usage figures and the feedback from public consultation, Network Rail considers that the crossing is used regularly by a very high number of people to access property and amenities on both sides of the railway.³⁰⁸ However, Network Rail considers that there are no public or private rights of way at this crossing, which would be closed to all users under the terms of the Order.
- 3.5.17.2. The case for and against the closure of S22 was canvassed over a number of days at the Inquiry. Network Rail accepts that there is no doubt that it is a well-used crossing which is highly valued by those who use it, and the community more widely.
- 3.5.17.3. It is also, however, the 6th highest risk passive footpath crossing on the Anglia route. Its FWI of 0.0128 is 10 times higher than that of the average footpath level crossing.³⁰⁹ It accounts for 0.4% of the total FWI across the Anglia Route, and would account for 71.1% of the FWI saving within the Order, if approved. There were 4 near misses in less than 6 months during 2017: 1 involving a child.
- 3.5.17.4. Network Rail considers that whilst it is important not to be too emotive about these issues, the risks are real and tangible and cannot be ignored.
- 3.5.17.5. As set out earlier in these submissions, Network Rail does not pursue this Order on the basis of the 'risk' posed at a specific crossing per se. Nor is safety the only, or even the most important, aspect of its strategic case. However, the real and tangible risks which exist at this crossing cannot, and must not, be forgotten amidst the many, and strongly felt, calls for it to be kept open for the community.
- 3.5.17.6. On that point, a number of objectors have suggested that the crossing is 'safe enough' or 'considered safe'. As set out above, Network Rail cannot rely on users considering a crossing to be safe; and familiarity can bring its own risks. Nor is there merit in the contention that this is 'only' a high-risk crossing (D2) because of the number of people using it.³¹⁰ Clearly, the greater the number of people using a crossing, the greater the likelihood that an incident will occur: hence a greater risk

³⁰⁸ NR/32-1 section 2.13.

³⁰⁹ Para 3 of Mr Prest's evidence note on additional information on S22 Weatherby (NR/INQ/71)

³¹⁰ As appeared to be being suggested in XXC by Ms Golden of A Kenning

and a 'higher' ALCRM score.³¹¹ That a crossing is only 'high risk' because it is a well-used crossing does not lend weight to the contention that it should therefore be kept open. Far from it being 'bizarre' for Network Rail to consider that a high level of use could justify its closure,³¹² it would be 'bizarre' to suggest that a high level of use of a crossing, with its corresponding high risk, should be kept open because of that use where there was a suitable and convenient alternative available.

- 3.5.17.7. Network Rail's position remains that there are no public rights of way over the crossing. Nor could any such rights be acquired by prescription. Its position on the status of the crossing remains unaltered. That position is not, however, repeated here, having been set out at some length in documents already submitted to this Inquiry.³¹³ However, for the purposes of this Inquiry, it has been agreed that the proposals should be considered in the same way as crossings which are subject to public rights of way in the Order. That is, if the Secretary of State considers (1) that Network Rail has made out its strategic case; and (2) that the proposed alternative route is suitable and convenient, that the Order may properly be confirmed without modification. If, on the other hand, the Secretary of State is not satisfied either (1) that Network Rail has made out its strategic case or (2) that the proposed alternative route is suitable and convenient, then Network Rail proposes that S22 should be removed from the Order.
- 3.5.17.8. In terms of the 'case' for closure, Network Rail has set out its position on the strategic case earlier in these submissions. The strategic case applies to each of the crossings within the Order: the benefits sought to be achieved through this Order are cumulative, in terms of benefit to the Anglia route as a result of reducing and rationalising its level crossing estate, rather than crossing specific. Network Rail does not, therefore, need to establish a 'strategic case' for closure of each crossing, or to demonstrate how, specifically, the strategic objectives which underpin this Order application, apply in respect of each crossing in isolation.
- 3.5.17.9. Network Rail has acknowledged that the different 'objectives' may carry different weight vis a vis the others if looked at on a one level crossing basis and it does not shy away from the fact that safety is clearly of greater relevance in respect of S22 than (for example) enhancements to the network. What must not be forgotten, however, are the cumulative benefits sought to be achieved through the multiple closures proposed under this Order.

OBJ/52-The Royal Mail Group Limited

³¹¹ As Mr Kenning confirmed to the Inspector when asked what the effect on risk score would be if higher numbers of people were using a crossing during the football season (noting concerns raised that the censuses at S22/S69 had been carried out in the summer, outside the football season)

³¹² FHDC Closing Submissions para 7

³¹³ Specifically, its Statement on Crossing S22 (NR/INQ/59), Note of Crossing S22 (with appendices) (NR/INQ/59a-o) and Supplementary Note on S22 (NR/INQ/78)

3.5.17.10. The RMG has raised a concern that the temporary road closure of Granary Road may affect its ability to meet its obligations. Network Rail's intention is to: remove tactile paving on both sides of Granary Road adjacent to S22; add a tarmac footway to the northern section of the road; and, reinstate a grass verge on the southern side. It indicates that the works are envisaged to take only a few days to complete and access to all properties will remain available via the existing road network.³¹⁴

The diversion

3.5.17.11. Users would be diverted along public highways on both sides of the railway, crossing at the underpass on New Cheveley Road. The additional distance travelled by users walking to/from the intersection of Willow Crescent and Cricket Field Road from/to the opposite side of the crossing on Granary Road would be around 870 metres in Network Rail's estimation.

3.5.17.12. Network Rail considers that, in terms of the balancing act, what needs to be considered is whether the proposed alternative route is suitable and convenient. It maintains that test properly reflects, and protects, the interests of users of the crossing. The crossing is not a valued asset in and of itself. It is of value or benefit insofar as it provides a route for people to use to cross the railway as part of a wider journey. In Network Rail's view, if the Secretary of State is satisfied that the proposed alternative route is suitable and convenient, he may therefore be satisfied that the balancing act weighs in favour of closure.

3.5.17.13. Network Rail says Ms Tilbrook has explained, in detail, why she considers the proposed alternative route for users, via the existing highway network, to be suitable and convenient. She has considered, and explained, the various purposes for which journeys over the crossing are made, and the people making those journeys. She has considered, and assessed, the proposed alternative route in terms of additional lengths, gradients and 'usability' (widths of footways, street furniture, ability of the route to accommodate the number of users). She has considered, and assessed, what the proposed diversion route would mean in terms of journey times, including those making the journey several times a day.³¹⁵ She has fairly acknowledged that the impact on some users will be greater than others, specifically, those living closest to the crossing on the southern side, particularly if accessing schools to the north. She has considered the risk of 'modal shift', and explained why she does not consider that is likely to be significant³¹⁶. She has confirmed that she considers the use of the highway network to be suitable for cyclists who might otherwise use the

³¹⁴ NR/INQ/36.

³¹⁵ For example, an interested party, who lives in Willow Crescent and whose children attend a local Primary School, discussed with Dr Wood in XXC (of Ms Tilbrook)

³¹⁶ In response to the point raised yesterday by FHDC in closings, paras 39-42, this was not a "gut feel". Network Rail draws attention to the EIA screening report page 144 (NR/INQ/37). There is no basis for concluding to the contrary.

crossing.³¹⁷ In Network Rail's view, her evidence was considered, thorough and compelling. Having considered all of those matters, she remains of the view that the proposed diversionary route is suitable and convenient.

- 3.5.17.14. Others disagree. Whilst acknowledging that is unsurprising, Network Rail maintains that does not, however, render Ms Tilbrook's assessment any less valid or of any less weight.
- 3.5.17.15. Network Rail accepts that the question of whether the proposed diversion route is suitable and convenient ultimately comes down to a matter of judgement. That judgement, in turn, will ultimately be one for the Secretary of State.
- 3.5.17.16. Network Rail observes that much has been made during the course of the Inquiry, and particularly in relation to S22, as to Network Rail's decision making processes. In particular, it has been suggested (or at least implied) that the fact Network Rail approached S22 on the basis that it did not enjoy any public rights of way tells against the Order being confirmed in this regard. Network Rail considers that that suggestion is misconceived.
- 3.5.17.17. Network Rail indicates that the proposal before this Inquiry, and the one which the Secretary of State must consider, is a proposal to close S22 by means of diversion. It is not a consideration of whether some other solution should be found for closure, or which of a number of different options should be preferred. Nor is it a judicial review of Network Rail's decision-making processes. The Order proposals fall to be considered on their merits as against the relevant 'tests': (1) is the strategic case made out; (2) is the proposed alternative 'suitable and convenient'. That is what must be considered on this application. Not how Network Rail got to this point.
- 3.5.17.18. Network Rail says Mr Kenning has explained, in any event, that other options have been looked at for this crossing. He explained in his PoE,³¹⁸ and in XIC,³¹⁹ the options considered and issues arising from the same; in particular with provision of a bridge.³²⁰ It is simply not the case that Network Rail has simply sought to close the crossing on the basis of there being no PRoW across it. Nor was the assessment of suitability and convenience carried out any differently for S22 than for any other crossing in the Order.³²¹

³¹⁷ In response to SR's submission (which is not accepted by Network Rail – see NR/INQ/78) that greater PRoW may exist over the crossing than footpath rights

³¹⁸ Para 19.4

³¹⁹ Day 19

³²⁰ Mr Kenning refers, in para 19.4.2, to a "fully accessible" bridge with "1:20 ramps" Given the users of this crossing – which include people with mobility aids (or mobility scooters) and those with pushchairs – it is difficult to see that it would be suggested Network Rail could – or should – provide a bridge which was not accessible to those users.

³²¹ Confirmed by ST in XXC, Day 12.

- 3.5.17.19. Nor in Network Rail's view are the criticisms of its consultation on its proposals for S22 justified. Mr Kenning sets out the consultation processes undertaken as part of the Order development in some detail in his Proof. Further details are provided in the Consultation Statement.³²² Network Rail has provided a plan, setting out the indicative area within which the leafletting exercise was undertaken in respect of the round 1 and round 2 consultations.³²³ Mr Kenning explained in evidence why a specific consultation event was not undertaken in Newmarket; Bury St Edmunds was considered a more suitable venue, overall, for the crossings subject to the consultation event in this area, and to hold a specific consultation event in respect of a single crossing would not have reflected the nature, and purpose, of the Order scheme. Whilst attendance might have been higher if held in Newmarket, there can be no doubt that Network Rail was well aware of the strength of feeling within the community against a proposal to close this crossing.³²⁴ The suggestion that an alleged deficiency in public consultation somehow invalidated the ALCRM assessment is, with respect, misconceived.³²⁵
- 3.5.17.20. For all the reasons explained in its evidence before the Inquiry therefore, Network Rail maintains that the Secretary of State may properly confirm the Order without modification.

SoM6

- 3.5.17.21. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector proposed alternatives

- 3.5.17.22. During the development of the proposal, Network Rail gave consideration to the possibility of a path along the southern edge of the track bed westwards towards the underpass on New Cheveley Road. However, it was not practical, due to issues with the change in level from track bed to road with limited land. It would have required the acquisition of residential land, which could not be justified, and the need to relocate a Network Rail telecoms mast and associated equipment.³²⁶

- 3.5.18. **S23 -Higham and S24 -Higham Ground Frame**

SoM4

³²² NR5

³²³ NR/INQ/94

³²⁴ Not least, as it was clearly communicated to Network Rail by FHDC in its consultation response: see NR5

³²⁵ Submission made by Mr Hodson in closings.

³²⁶ NR/32-2 page 200.

- 3.5.18.1. These crossings are considered together in closings as the crossings share a common locality and the proposed replacement routes developed together.
- 3.5.18.2. S23 is currently temporarily closed due to safety concerns albeit without a currently valid Temporary Traffic Regulation Order, as explained by Mr Prest³²⁷. An application has been lodged with SCC and is pending determination. Network Rail has identified that prior to closure it had an ALCRM score of C9. S24 has an ALCRM score of C6. As S23 is temporarily closed, it is not possible to gauge demand for usage of it accurately. An ALCRM assessment in 2014 estimated usage as zero. At S24 a 9-day camera census undertaken during June/ July 2016 recorded 50 pedestrian users.
- 3.5.18.3. 1 person provided feedback on the use of S23 and 1 person on S24 during the first round of public consultation. Based on the location of the crossing points, usage figures, where available (S24), and the feedback from public consultation, Network Rail considers that: usage of S23, providing a link between footpath networks, is likely to be very low; and, S24 is likely to be used very infrequently by a small number of people. The recorded large single day use of S24 may have been associated with an organised walk.³²⁸
- 3.5.18.4. The Order would confer powers to close the level crossings to all users and extinguish public rights of way over the crossings.
- OBJ/52-The Royal Mail Group Limited (RMG)*
- 3.5.18.5. RMG has raised a concern that the temporary road closures of the A14 on-slip westbound, between Higham Road and Coalpit Lane, may affect its ability to meet its obligations. Network Rail's intention is to create a 1.5 metre wide footway within the highway verge south of the A14 on-slip road between the northern point of Higham Road and the Coalpit Lane intersection. It envisages that the road closure would only be required for a few days. Furthermore, throughout the works east/west bound traffic would continue to utilise a single lane facilitated by temporary traffic lights, enabling traffic flows to continue.³²⁹

The diversions

- 3.5.18.6. Network Rail considers that the issues arising in respect of these crossings can be divided into three, broadly geographical, areas: (1) Higham Road east from S23 to the A14 slip road; (2) the interface of the diversionary routes with Coalpit Lane; and, (3) the proposed easterly diversion routes for S24.

(1) Higham Road

³²⁷ XIC/XXC Day 20. Mr Prest also explained the concerns which led to the crossing being closed in June 2016, and what would need to be done for the crossing to be safely reopened.

³²⁸ NR/32-1 section 2.14.

³²⁹ NR/INQ/36.

- 3.5.18.7. The journey from the junction of Higham Road and Footpath 001 Higham, to the junction of Higham Road with the westbound A14 slip road, is approximately 200 metres shorter than the equivalent journey via the level crossing. Pedestrians would make use of existing verges and carriageways up to the point where Higham Road meets the A14 slip road. A new 1.5 metre footway would be provided in the highway verge (between The Tavern and Coalpit Lane) to improve connectivity for walkers heading east from the end of Higham Road.
- 3.5.18.8. SCC and Ramblers' Association are concerned about the proposed use of Higham Road to the point where it reaches the existing bridge over the A14 slip road (no issue is raised with the use of this bridge).
- 3.5.18.9. Network Rail suggests that this route and its verges are currently used as linkages between the PRow network in the area.³³⁰ The Network Rail commissioned RSA did not identify any issues with this section of Higham Road. It was Ms Tilbrook's evidence that there is verge available along the full route, although she acknowledged that it may be necessary to cross the road to make use of the opposite verge in some locations.³³¹ She made clear in her oral evidence that due to the level of traffic flows and speeds in this location, crossing the road to make use of verges was not, in her view, problematic. In XIC,³³² she confirmed that pedestrian facilities along Higham Road could be improved (a recommendation of the SCC commissioned RSA³³³), that verges may benefit from vegetation cut back and mowing and more regular maintenance,³³⁴ and that it would be achieved with the widths available on the ground. She did not consider that a separate facility needed to be provided within the verge. Mr Haunton confirmed, in XXC,³³⁵ that the proposals in para 2.1.9 of Ms Tilbrook's Rebuttal Proof were broadly aligned with the recommendation in the Capital Traffic RSA. Mr Russell confirmed in XXC³³⁶ that he would be content with a re-profiled verge, rather than metalled footway, and acknowledged that if both S23 and S24 were to be closed, then users of Higham Road would have to cross Higham Road at some point.

(2) Coalpit Lane

- 3.5.18.10. Of the 2 alternative routes proposed by Network Rail to mitigate the impact of closing S24, the shortest runs to the west of the crossing. Using this route northbound pedestrians on the southern side of S24 would travel west along a new footpath in the field margin to Coalpit Lane, at which point the proposed footpath would run south in the field margin, adjacent to Coalpit Lane, to a point opposite Footpath 005

³³⁰ ST Rebuttal for S24 (NR/32-4-7) para 2.1.5

³³¹ ST Rebuttal for S24 para 2.1.6

³³² On Day 17 of the Inquiry

³³³ Appendix 1 to Mr Haunton's PoE page 4 (OBJ/29/W5/AP1 page 196)

³³⁴ As set out in para 2.1.9 of ST Rebuttal Proof for S23 & S24 (NR/32-4-7)

³³⁵ On Day 21 of the Inquiry

³³⁶ Day 17

Higham. Users would then cross Coalpit Lane and travel in a westerly direction along Footpath 005 Higham, before turning north on Higham Lane and then east alongside the A14 west-bound on-slip as far as its intersection with Coalpit Lane. They would cross the A14 on-slip and the Coalpit Lane bridge over the A14 in order to link up with the footpath network a short distance to the north. With reference to the existing route, the additional length associated with that alternative would be around 910 metres³³⁷.

- 3.5.18.11. Two issues arose in respect of Coalpit Lane and its interface with the proposed diversionary routes for S23 and S24. The first was the proposed crossing point of the A14 slip road to enable users of the new footway proposed along the southern side of the A14 slip road to continue north on the existing overbridge. The second related to the point at which the proposed diversionary route from the east (S24) came out onto Coalpit Lane: specifically, in terms of whether users heading from the east would in fact turn south to the proposed exit point, and issues relating to visibility where the existing Footpath 005 Higham from the west emerges onto Coalpit Lane.
- 3.5.18.12. The debate as to the proposed crossing point focussed as to where exactly it should be located: close to the junction with Coalpit Lane, which is the Network Rail proposal, or further west along the A14 slip. No party suggested that a safe crossing point could not be provided: it really came down to a question as to where that crossing point should be.³³⁸ Network Rail considers that Ms Tilbrook's evidence as to why the crossing point should be located close to the junction was clear and compelling. However, the exact details of the crossing point will need to be a matter for detailed design, which Ms Tilbrook stated would require thought to be given to the cause of any recent accidents – albeit she did not consider a formal collision conflict study necessary. It goes without saying that the junction would, in any event, require the approval of the Highway Authority.
- 3.5.18.13. Continuing south on Coalpit Lane, 2 further issues arose. The first related to visibility for users emerging from Footpath 005 Higham from the west. It should be noted, firstly, that Network Rail is not creating this new interface with Coalpit Lane, it is an existing issue and it is assumed, as part of the definitive PRoW network, it is deemed suitable and safe by SCC³³⁹. Ms Tilbrook confirmed in her rebuttal proof that visibility had been calculated and met the desirable minimum set out in LTN 2/95 Table 1 – the recommendation made by the SCC commissioned RSA.³⁴⁰ Mr Russell attempted to suggest during XXC that

³³⁷ NR/32-1 para 2.14.21.

³³⁸ See e.g. Mr Russell's PoE para 4.27 "this crossing closure could be made acceptable in terms of pedestrian safety were Network Rail to include...."; Mr Haunton in XXC on Day 21 Question "You're not saying there can't be suitable solution at that crossing, just that it needs to be looked at very carefully" Answer "It's not for a road safety audit to recommend the need for a scheme but to make proposals as safe as possible."

³³⁹ NR/32-2 page 193.

³⁴⁰ NR/32/4/2 page 7, section 4.1.2 of the RSA for S23 (Appendix 1 to Mr Haunton's PoE), NR/32-2 page 193.

forward visibility would represent a departure³⁴¹ from standards in TD 9/93³⁴² on the basis that para 1.26 of TD9/93 provided that relaxations below desirable minimum for stopping sight distances were not permitted 'on the immediate approaches to junctions' and sought to suggest that the interface between Footpath 005 and Coalpit Lane should be seen as such a junction. That suggestion is wholly unsustainable on a proper reading of TD 9/93 – not least, as para 1.26 itself defines what is meant by 'the immediate approaches to a junction' for the purposes of the Standard. No weight whatsoever can be placed on Mr Russell's evidence in this regard.

- 3.5.18.14. A second concern raised by Mr Russell related to the potential use of Coalpit Lane heading north by walkers travelling from the east. That is not part of Network Rail's proposals; Network Rail has provided for a field edge footpath bringing users south alongside Coalpit Lane to the point where they can cross and can continue westwards along Footpath 005 Higham. Mr Russell's concern appeared to be that instead of following the dedicated on-field footpath, walkers would effectively force their entry out onto Coalpit Lane and continue north instead. Ms Tilbrook explained in her evidence why she thought that was unlikely, noting in particular the physical features on the ground separating the proposed new footpath from Coalpit Lane. It was indeed a surprising statement from a witness called on behalf of the Ramblers' Association, given the emphasis the Ramblers' Association have placed on the comparative demerits of the use of rural roads rather than an in-field footpath at other points during this Inquiry. Network Rail submits that Ms Tilbrook's evidence is clearly to be preferred.

(3) Footpaths east of S24 Higham

- 3.5.18.15. The other alternative route proposed by Network Rail to mitigate the loss of S24 would take pedestrians eastwards from the southern side of the crossing. No issues were raised with the proposed diversionary routes east of S24 Higham by either SCC or the Ramblers' Association. Indeed, it would be surprising if SCC had objected, as the eastern proposals developed by Network Rail at the round 1 public consultation stage were subsequently amended following receipt of a proposal from SCC suggesting a route east via Needles Eye underpass to a highway leading north across the A14; around 2,500 metres to the east of S24³⁴³.
- 3.5.18.16. OBJ/42, whilst they consider the creation of a route A-B³⁴⁴, to be unnecessary, they do not object to it. However, they objected to the other two proposed new PRoW being provided on their landholding: those marked B-C³⁴⁵ (the proposed bridleway to the north of Needles

³⁴¹ It would not in fact represent a departure but a 'relaxation', see para 2.8 of TD9/93.

³⁴² Tab B to ST's Supplementary Appendices, (NR/INQ/15)

³⁴³ NR/32-1 para 2.14.20.

³⁴⁴ Order sheet 4 P011 to P012 Order sheet 8.

³⁴⁵ Order sheet 8 P012A-P014 Order sheet 9.

Eye underpass running east) and D-E³⁴⁶, a PRoW running east/west between Footpath 006 Barrow and Bridleway 018 Barrow.³⁴⁷ Their concerns arise, in particular, from the impacts they say the PRoW would have on their use of the land, specifically in relation to shooting activities which take place. However, it was confirmed that Mr Lloyd was not providing evidence as to whether, from a PRoW perspective, the proposed PRoWs were 'required' or 'suitable and convenient'. Ms Tilbrook explained, clearly and compellingly, why it was considered that the new PRoWs were required to provide a suitable and convenient replacement for users of S24. She highlighted that the proposals in the Order would result in the loss of two north/south routes over the railway, through the closure of both S23 and S24. She identified that whilst Order proposals would allow users of both S23 and S24 to cross the railway via the Coalpit Lane overbridge, this was rather closer to S23 than to S24, and the Needles Eye underpass route was considered the suitable point to provide a north-south connection to the east of S24. It would also preserve the ability for circular walking in the area. The only 'assessment' of these matters before this Inquiry is that of Ms Tilbrook.

- 3.5.18.17. Ms Tilbrook explained, clearly and compellingly, why it was considered that the new PRoWs were required to provide a suitable and convenient replacement for users of S24. She acknowledged that the Order proposals would result in some degree of improvement or enhancement to the network. However, that is not precluded under section 5(6). Whilst Network Rail does not dispute that section 5(6) cannot be used to provide enhancements to the PRoW network in and of itself, if an element of improvement or enhancement results from providing a suitable and convenient alternative for users of the existing right of way, that is clearly not precluded. Nor, with respect, is it accepted that the word 'alternative' in section 5(6) TWA imposes any further limitations or restrictions over and above those set out in Annex 2 to the TWA Guidance that '*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*'. It is not disputed by Network Rail, for example, that a proposed new PRoW which served a wholly different purpose to that to be extinguished would not be an 'alternative'.
- 3.5.18.18. Network Rail suggests that in reality, what this issue comes down to is whether or not the Secretary of State considers that the Order proposals have struck the right balance. In considering that, he will no doubt wish to have regard to the compensation which would be available to the affected landowners under the Order provisions,³⁴⁸ and will note that Mr Farthing had to 'temper' the language used in his written submissions in light of Mr Lloyd's oral evidence. Mr Lloyd fairly acknowledged in XXC that it was of course possible to take measures to manage risks, but

³⁴⁶ Order sheet 4 P015 to P017 Order sheet 7.

³⁴⁷ It was clarified, following delivery of Closing submissions on their behalf, that those are the two routes formally objected to, despite the position having appeared to have changed in closings.

³⁴⁸ Mr Billingsley explained in XIC what a claim under those provisions might, in principle, include in a case such as present, highlighting that 'shooting rights' are expressly referred to in section 28 of the Highways Act 1980.

drew attention to the restrictions that imposed, which the landowner would not otherwise have to deal with.

SoM6

- 3.5.18.19. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected. For all the reasons explained in its evidence before the Inquiry therefore, Network Rail maintains that the Secretary of State may, with reference to S23 and S24, properly confirm the Order without modification.

SoM10

Objector's proposed alternatives

- 3.5.18.20. In relation to the proposed closure of S23, SCC is concerned with the proposal for road walking in this area and considers, as stated in XXC, that "*an opportunity has been lost*" not to, in effect, divert the southern section of Footpath 001 Higham to run along the eastern side of the field (behind the houses on Higham Road) rather than on the west side as at present.
- 3.5.18.21. Ms Tilbrook explained in evidence why, as the proposed route using Higham Road was considered suitable and convenient, not least, having regard to traffic flow, speeds, the fact this road was already a linkage in the wider PRow network, and the number of users of the crossing being low³⁴⁹, there was not considered to be a compelling case to use private land to provide an alternative route.
- 3.5.18.22. Nor is it as simple as suggesting that this could be something 'done by agreement', or that it was effectively a matter of diverting the footpath from one side of the field to the other. As Ms Tilbrook explained, it is likely that some works would be required to bring users out onto Higham Road bridge (with consequent implications for powers in the Order / new plots having to be included within Order limits). The need for something to be done to provide a connection to Higham Road/the overbridge was not understood to be seriously disputed by Mr Woodin in XXC.³⁵⁰ Mr Woodin also accepted in XXC that in looking at an alternative route, it was necessary to look at other interests, not just the interests of users of the right of way, and acknowledged that the footpath route advocated by SCC would run along the back of residential properties which already have frontages to Higham Road.

- 3.5.19. **S25 - Cattishall**

SoM4

³⁴⁹ See e.g. para 2.1.8 of ST's rebuttal proof for S23/24 (NR/32-4-7).

³⁵⁰ Day 21

- 3.5.19.1. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9-day camera census undertaken during June/ July 2016 recorded 190 pedestrian users. 21 bicycles were recorded as being ridden over the crossing and 132 bicycles were walked over. 13 people provided feedback on the use of S25 during the first round of public consultation. Based on the location of the crossing points, usage figures and the feedback from public consultation, Network Rail considers that usage is primarily for leisure and recreational access to the local area by a moderately high number of people on a regular basis. However, there is some limited evidence of use for access to property and commuting.³⁵¹
- 3.5.19.2. The Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing.
- 3.5.19.3. The main concerns raised in respect of these proposals centred on the proposed closure of the level crossing prior to the provision of a bridge over the railway. As set out in Mr Kenning's evidence,³⁵² Network Rail has been working closely with Berkeley Strategic, who are looking to develop a site to the northwest of the level crossing ('the North East Bury St Edmunds site'), as part of which it is anticipated that a bridge will be provided over the railway at the location of the level crossing. It is understood by Network Rail that the bridge would be required to be included as part of an application for planning permission for the site, in order to provide connections to the Moreton Hall site (also referred to at Inquiry as the 'Taylor Wimpey' site) currently under construction to the south of the level crossing, and the wider facilities to the south of the railway. As Mr Kenning made clear in his evidence, nothing in the Order would preclude any development of this area, and Network Rail is not doing anything that would jeopardise the construction of a bridge in the future.³⁵³
- 3.5.19.4. The concerns raised by objectors were, essentially, three-fold: firstly, that closure of the level crossing prior to provision of the bridge was premature; secondly, that closure of the level crossing was contrary to local and national planning policies; and, thirdly, that the proposed alternative route (providing a dedicated footway and cycle route through an underpass to the west (currently closed and not subject to any public rights of way, albeit with a footway/cycle path built up to it on the southern side) and a new footpath/cycleway from the northern side to join up with the unnamed road (a dedicated National Cycle Network route) to the north of the crossing) was not suitable and convenient for existing users.
- 3.5.19.5. As to prematurity, if the Secretary of State is satisfied that Network Rail's strategic case for the Order is made out, and that the proposed alternative route is suitable and convenient, there is no basis for requiring Network Rail to forego, or defer, the strategic benefits which

³⁵¹ NR/32-1 section 2.15.

³⁵² PoE para 22.4

³⁵³ NR/INQ/93

would be achieved through this Order until such time as a bridge is provided as part of the proposed development to the north, whose consent and funding rests in the hands of third parties, is brought forward. As Mr Kenning explained in XIC,³⁵⁴ "Network Rail *simply wishes to progress closure of the level crossing by provision of a diversion without having a dependency on third party developments, not least as these can (sometimes) be put on hold for years (especially in uncertain financial times)*".

- 3.5.19.6. In this context, it should be borne in mind that the construction of the Moreton Hall development to the south, has the potential to increase the number of users of the crossing as it is built out and occupied and hence risk. The Inspector will also recall Ms Bradin's view³⁵⁵ that the crossing should be closed now (albeit, through provision of a bridge by Network Rail). Mr Kenning also outlined, in evidence in chief, the enhancements identified as needed to the line on which this crossing is located, and how continued presence of the crossing on the network would interact with that.
- 3.5.19.7. Further, it should also be borne in mind that planning permission for development to the north, including planning permission for a bridge, would not, in and of itself, authorise closure of the level crossing, and extinguishment of the PRow across it. It was suggested by the Ramblers' Association in Closings that section 257 of the *Town and Country Planning Act 1990* (TCPA 1990) could be relied upon in that regard. Section 257(1) permits a 'competent authority' by order to authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied 'that it is necessary to do so in order to enable development to be carried out:'. Reliance on this section would therefore depend on the test of 'necessity' (as it has been developed by the Courts in the context of applications under section 247 & section 257 TCPA 1990 being met). It is not necessary to consider this further: merely to note that closure of the crossing under section 257 TCPA 1990 is not an automatic, and certain, consequence of planning permission being granted for development to the north.
- 3.5.19.8. Nor, in Network Rail's view, is there merit in the suggestion that if the Order is confirmed, Network Rail may no longer be willing to grant the necessary rights to enable construction of a bridge at this location, or that the financial considerations would be different. Mr Kenning was not authorised to give any 'commitment'³⁵⁶ on behalf of Network Rail in this regard,³⁵⁷ but Network Rail has provided a note³⁵⁸ to the Inquiry on its approach to 'shared value', where a developer is seeking rights over railway land to enable development, which makes clear that a 'price' has been agreed with Berkeley Strategic which has taken into account the

³⁵⁴ NR/INQ/93.

³⁵⁵ For the Ramblers' Association.

³⁵⁶ It being outside his authority as opposed to his 'expertise' – cf para 23 of SEBC's closings.

³⁵⁷ Mr Kenning in response to questioning by Ms Rumfitt, Day 18.

³⁵⁸ NR/INQ/104.

- 'railway enhancement work' associated with the closure of the crossing in applying Network Rail's shared value policy.
- 3.5.19.9. Network Rail considers that there is simply no merit in the suggestion, therefore, that if the Order powers are granted, this would jeopardise the bridge solution being brought forward by the developer to the north.
- 3.5.19.10. As regards planning policy, Mr White, for St Edmundsbury Borough Council (SEBC), referred to a number of national and local policies in his PoE which he suggested the closure of the level crossing was in conflict with. In cross-examination, Mr White accepted that when looking at policy compliance/conflict it was necessary to look at the relevant policies for the development in issue, and that you cannot identify a policy which might be made to fit a particular development but have to look at the policy terms and context to see if it does in fact apply to that development. He further agreed that in construing a policy, it was permissible to have regard to the explanatory text, "*sets helpful context*".³⁵⁹
- 3.5.19.11. However, having agreed with those uncontroversial general principles as to the approach to planning policy, it was apparent when drilling down into the policies relied on in his Proof, that carefully scrutinising whether a policy in fact applied to the development at issue, as opposed to identifying a policy that could be made to fit, was exactly what he had not done.
- 3.5.19.12. In terms of the *Framework, March 2012*, for example, the 3 paragraphs relied on (paras 34, 37, 61³⁶⁰) were, in reality, nothing to do with diversions of PRow. Para 34 was concerned with 'plans and decision-making' ensuring that "developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised". Para 37 provides that "Planning policies should aim for a balance of land uses in their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities". Para 61 is situated in section 6 of the *Framework, March 2012*, '*requiring good design*'. The most that Mr White was able to take, in reality, from those policies was to highlight the policy directive of '*maximising sustainable forms of transport*', and that "*it's relevant and adds a clear direction as to Government direction and the Framework generally.*" That is manifestly insufficient to substantiate the conclusion he advanced in his PoE that the closure of the level crossing would be "contrary" to those provisions of the *Framework, March 2012*.³⁶¹
- 3.5.19.13. Similarly, when the local plan policies relied on by Mr White were scrutinised it was again clear that they simply did not apply to what is sought under the Order. As appeared to be accepted in XXC, Core Strategy Policy CS11 is not an "*allocation policy*" for Moreton Hall

³⁵⁹ Mr White in XXC Day 18.

³⁶⁰ [Inspector's note: see paragraphs 103, 104a) and 91 of the Framework, February 2019].

³⁶¹ Mr White PoE para 7.

(CS11(ii)) or the North East Bury St Edmunds site, to the north of the railway (CS11(iv)). The Core Strategy sets high levels of growth around Bury St Edmunds. Core Strategy 11 relates to the 'broad locations' indicated by the yellow arrows on the Key Diagram at internal page 11 of the policy (OBJ/29/C10 page 447). The introduction to the Core Strategy states in terms, at para 1.2,³⁶² that it '*does not include details of site specific allocations or policies for the management of new development.*' Even if those policies are looked at as policies specific to the Moreton Hall and the North East Bury St Edmunds sites it is clear that they are directed at the developer looking to deliver housing (etc) on those sites and are solely concerned with what the Council would expect to see the developer of the site bringing forward in order for that development to be consented. That is not Network Rail, and these policies are thus simply not applicable when considering what Network Rail is seeking through this Order.

- 3.5.19.14. Mr White also agreed in XXC that CS8 ('Strategic Transport Improvements') was a high level policy tied to an 'Infrastructure Delivery Plan'.
- 3.5.19.15. In respect of policies in the *Forest Heath and St Edmundsbury Joint Development Management Policies Document*, Policy DM2 is a general, 'good design' policy.³⁶³ Policy DM3 is about provision of Masterplans and what they are expected to include. They are simply not relevant to the Order proposals. Policy DM44 is directly concerned with rights of way. However, to the extent that it departs from (and goes beyond) the 'policy' test set out in the TWA Guidance (as discussed earlier in these Submissions) Network Rail would respectfully submit that it clearly cannot 'trump' the same. Nor can it require a different, or more onerous, test to be applied in considering the replacement PRow to be provided at Cattishall to that which applies to the other crossings within the Order. In any event, as Mr White accepted in cross-examination, the question of whether the proposed alternative route is '*at least as attractive, safe and convenient for public use*' will be a matter of judgement for the decision-maker. Clearly, a highly material consideration in that regard will be that the proposed new route would provide a dedicated footway/cycleway directly linking to a wider cycle/footway provision on the north and south sides of the railway, whereas the current route requires users to cross the railway at grade (with the associated risks and interruption to journey involved), and requires cyclists to dismount in any event, the PRow across the crossing being limited to footpath only.
- 3.5.19.16. As regards the Masterplans for the two development sites, Network Rail says it is again clear when they are considered that there is no conflict between the Order proposals and planning for those sites. As Mr Kenning made clear in evidence, closure of the level crossing does not

³⁶² OBJ/21/29/C10 page 419

³⁶³ A full copy of the policy and its explanatory text is at NR/INQ/91

preclude a bridge being provided as part of the Berkeley Strategic North East Bury St Edmunds site development. It was not seriously suggested by anyone that that additional 'north-south link' should be provided by way of the existing level crossing when that development comes forward. The Moreton Hall Masterplan³⁶⁴ expressly identifies a safeguarded area which would enable the construction of a bridge over the railway in the future. It is also notable that the Moreton Hall landscaping scheme (Fig 9 of Mr White's PoE) appears to show routes to the north of the site being directed west, not north over the level crossing. This is notably reflected in the application submitted by Taylor Wimpey for an Order under section 247 TCPA 1990 stopping up the length of U6318 Cattishall Lane which plans show the road being stopped up and replaced by a bridleway which does not connect to the level crossing but instead curves to the west.³⁶⁵

- 3.5.19.17. Network Rail considers that properly scrutinised therefore, it is clear that the conflicts alleged with national and local planning policy in Mr White's PoE simply cannot be substantiated.

The diversion

- 3.5.19.18. Users would be diverted to an existing underpass to the west using a mixture of new and existing routes. The maximum diversion distance would be around 1,000 metres³⁶⁶.
- 3.5.19.19. In terms of suitability and convenience of the proposed route, this appeared to turn, to a large degree, on the comparative convenience for those living on the Moreton Hall development, that is immediately to the south of the crossing, with additional concerns as to the lack of the 'linear route' running from Green Lane in the north to the employment site and now Academy to the south.
- 3.5.19.20. Network Rail accepts that occupants (or the future occupants) of the Moreton Hall site can be considered as 'existing users' of the existing route, for the purpose of considering whether the proposed alternative is suitable and convenient. However, it is important not to lose sight of the wider group of existing users of the crossing noting in particular the significant housing development that is located to the west of the level crossing, for whom the underpass would clearly be a more obvious crossing point, and that the majority of facilities and services are located again in a westerly direction from the level crossing. Ms Tilbrook explained in some detail in her evidence why she is satisfied that the proposed route would be suitable and convenient, looking at (i) the wider network, (ii) the purposes for which journeys are likely to be made, (iii) the additional journey lengths/times likely to be involved (noting in XIC that additional distances are likely to be rather less for users from the north heading west towards Bury St Edmunds), and (iv) the dedicated footpath/cycleway being provided.

³⁶⁴ NR/INQ/92.

³⁶⁵ OP/INQ/82.

³⁶⁶ NR/INQ/106.

- 3.5.19.21. Mr Woodin (for SCC) takes a different view. Ms Bradin has concerns about the suitability of the underpass full stop, but it is noted that the use of the same is promoted by the local planning authority as a proposed north/south connection when the North East Bury St Edmunds site development comes forward.
- 3.5.19.22. Ultimately, the question of whether the proposed route is suitable and convenient will be a matter of judgement for the Secretary of State. Network Rail maintains that he can confidently be satisfied that it will be, and thus that the Order may properly be made without modification.

SoM6

- 3.5.19.23. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector's proposed alternatives

- 3.5.19.24. OBJ/36 suggested that, north of the railway, the red route shown on the round 1 consultation material is to be preferred to the proposed blue route. It was not taken forward as it did not align favourably with the proposed development and existing Restricted Byway 004 Great Barton was considered to be of a lower standard of surface finish than the existing tarmac road.³⁶⁷

- 3.5.20. **S27 - Barrell's and S28 - Grove Farm**

SoM4

- 3.5.20.1. Network Rail has identified that S27 and S28 both have an ALCRM score of C6. A 9-day camera census undertaken during June/ July 2016 at S27 recorded 23 pedestrian users. A census at S28 over the same period recorded 34 pedestrian users. 7 people provided feedback on the use of S27 and 7 people on the use of S28 during the first round of public consultation. Based on the location of the crossing points, usage figures and the feedback from public consultation, Network Rail considers that the crossings are used on a regular basis by a relatively small number of people to access the footpath network and S27 is also used to access properties.³⁶⁸
- 3.5.20.2. The Order would confer powers to close the level crossings to all users and extinguish public rights of way over the crossings.

OBJ/48-Mr and Mrs Brace

³⁶⁷ NR/32-2 pages 194 and 91.

³⁶⁸ NR/32-1 section 2.16.

- 3.5.20.3. The proposals for these crossings have been developed together, seeking to provide suitable and convenient routes to the existing users displaced by the closure of two level crossings in relatively close proximity. As set out in Network Rail's Note on S27 /S28 (NR/INQ/107), as the Order is currently drafted, closure of both S27 and S28 (or indeed, of S27 or S28) is dependent upon the provision of the new PRowS detailed in the 4th column of Part 1 of Schedule 2 of the Order: including that section of footpath objected to by Mr and Mrs Brace.³⁶⁹
- 3.5.20.4. Mr and Mrs Brace are objecting to the proposal to create a new PRow running within their neighbour's landholding to the west of their property. As Mr Kenning explained in evidence, the location of the footpath was changed, following round 2 consultation, in light of the concerns which had been raised by the directly affected landowner, Mr Le Mar.
- 3.5.20.5. Mr and Mrs Brace are concerned, in particular, as to the implications for security for their property, and risk of their horses being startled either by walkers using the route, or dogs escaping onto the property. Network Rail has sought to identify and to agree a solution for mitigating those concerns with Mr and Mrs Brace: this is also demonstrated from the documents included within Mrs Braces' Appendices. The proposals advanced by Network Rail have not been agreed to by Mr and Mrs Brace.³⁷⁰ Network Rail has therefore obtained the agreement of their neighbour, Mr Le Mar, to erect a 1.2m chain link fence within the boundary of his property in order to provide a physical demarcation of the PRow, with a view to addressing the security concerns expressed by Mr and Mrs Brace. As Mrs Brace fairly agreed in XXC, it would, in principle, be open for people on Mr Le Mar's land to access the Brace's land now, and if someone was determined to enter their property they could.
- 3.5.20.6. In considering its proposals for these crossings, Network Rail has had to consider a number of factors, including the impact on landowners. It considers it has struck that balance correctly.
- 3.5.20.7. As the Order proposals for S27 and S28 are linked, as set out in NR/INQ/107, if the Order were modified to remove closure of S27, this would not remove the need to create the proposed new PRow to the west of Mr & Mrs Brace's property. Network Rail has set out its position why it would not support any other modifications to the Order in that Note, and during the Modifications session.
- 3.5.20.8. Network Rail maintains that the Secretary of State can properly be satisfied that a suitable and convenient alternative will be provided, and the Order confirmed without modification.

OBJ/52-The Royal Mail Group Limited

³⁶⁹ OBJ/48

³⁷⁰ Mrs Brace confirmed, in XXC

- 3.5.20.9. The RMG has raised a concern that the temporary road closure of Barrell's Road, associated with the closure of S27, may affect its ability to meet its obligations. Network Rail does not believe that the proposed pedestrian improvement measures would affect the ability of the RMG to carry out its duties.³⁷¹

The diversion

- 3.5.20.10. Users would be diverted to existing road bridges to the east and west using a mixture of new and existing routes. Network Rail estimates that the length of diversion for a user would range, depending on direction of travel, from around 230 metres to 950 metres.
- 3.5.20.11. The proposals are considered together in Ms Tilbrook's proof of evidence.³⁷² She explained in evidence how the proposed alternative routes provide suitable and convenient routes for existing users by reference to the wider PRow network, together with the implications of the proposals for additional journey lengths and times from various points.³⁷³ The connectivity provided by the routes was not understood to be questioned. The main issues as regards suitability and convenience turned on road safety concerns and the 'experience' provided by the proposed alternatives as compared with the existing routes.
- 3.5.20.12. In respect of road safety, the proposed use of Barrell's Road, Birds Road, and the unnamed road to the east, were subject to RSAs commissioned by both Network Rail and by SCC. The RSA commissioned by Network Rail did not identify any issues.³⁷⁴ Despite the RSA not having raised any issues, the design proposals for S27, detailed in the Design Guide, suggested a number of proposed works, designed to delineate a safe space for pedestrians over the Barrell's Road bridge; removing a section of verge on the east and west approaches to the bridge to provide safe standing areas for pedestrians; and cutting back of overgrown hedges on approaches to the bridge.³⁷⁵
- 3.5.20.13. The RSA commissioned by SCC identified concerns due to lack of limited forward visibility over the Barrell's Road bridge and the bridge on the unnamed road. However, as Mr Haunton confirmed in XXC, in carrying out its RSA, Capita Traffic did not have sight of Network Rail's proposals in respect of Barrell's Road bridge – specifically, the proposed designation of safe spaces; information as to the level of users likely to be diverted from the crossings; or automatic traffic count (ATC) data and speeds. Those matters, amongst others, - including the work done to understand forward visibility over Barrell's Road bridge³⁷⁶ – have all been considered by Ms Tilbrook in reaching her conclusion that the proposed route is suitable and convenient when considered in the

³⁷¹ NR/INQ/36.

³⁷² Section 2.16

³⁷³ XIC Day 21

³⁷⁴ ST PoE para 2.16.37, by reference to para 2.16.31.

³⁷⁵ NR12 Para 3.2.1.2 (page 31)

³⁷⁶ PoE para 2.16.38 as amended by NR/INQ/96, read with NR/INQ/103

context of the purposes and characteristics of the existing route and wider rural road and footpath network.

- 3.5.20.14. Mr Russell has also considered the potential road safety issues on this route, again with reference to the use of the road bridges. His view was that the crossing closure could be made acceptable in terms of road safety: he just did not agree with the measures proposed by Network Rail in the Design Guide.³⁷⁷ Having considered Mr Russell's evidence, Ms Tilbrook agreed, in XIC, that the points raised about removal of the verges on the bridge were fair points, and that there was further work to do at detailed design stage, possibly around re-profiling rather than removing the current verge in their entirety, to discourage 2 cars from trying to cross. Mr Russell confirmed in XXC³⁷⁸ that the issue was not one of whether a solution could be found, but how it was provided.
- 3.5.20.15. Mr French raised other concerns relating to road safety for SCC. However, as he accepted in XXC, he did not have a road safety background or qualification, nor had the issue been raised by the Network Rail or SCC RSAs or by Mr Russell³⁷⁹: these were simply his views. With respect, it is submitted by Network Rail that little weight should therefore be given to the views expressed in Mr French's PoE when considering the suitability and convenience of the proposed alternative routes.

SoM6

- 3.5.20.16. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector's proposed alternatives

- 3.5.20.17. Network Rail has confirmed to OBJ/48 that, contrary to their request, it does not intend to erect a 2 metre high fence between the proposed footpath (P034 to P035) and their western boundary, as it would sever some of Mr Le Mar's land from the rest of his field. Instead Network Rail proposes to erect a 1.2 metre high chain link fence, which would provide a physical demarcation between the Brace's property and the footpath, whilst allowing Mr Le Mar to continue to view and access the strip of his land on the eastern side of the fence. Network Rail understands that this would not fully address OBJ/48's concerns over visibility of pedestrians/dogs on the proposed footpath and that that could startle

³⁷⁷ Mr Russell's PoE para 4.66 (OBJ/036/W10/1)

³⁷⁸ Day 22

³⁷⁹ To the contrary: Mr Russell's evidence, at para 4.56 of his PoE, was that "I am satisfied with most of the proposed diversion route in terms of design for pedestrians" (OBJ/036/W10/1)

their horses. However, it is reasonable, given that the front of the Brace's property, adjacent to the public road, is already very exposed to pedestrians/dogs on the highway.³⁸⁰

3.5.21. **S29 –Hawk End Lane**

SoM4

3.5.21.1. Network Rail has identified that the level crossing has an ALCRM score of C6. As the level crossing is currently closed under a Temporary Traffic Regulation Order, owing to the ongoing development of the land to the north of the railway, it has not been possible to undertake a census of usage. However, in 2015, before the closure was implemented, a 7 day census was undertaken by Arup on behalf of Harrow Estates plc. This concluded that Hawk End Lane level crossing was on average used by 2 people daily, although this included at least 4 uses by railway workers over that period. 6 people provided feedback on the use of S29 during the first round of public consultation. Based on the location of the crossing points and the feedback from public consultation, Network Rail considers that the crossing provides access to areas of Elmswell north and south of the railway, including for the purposes of leisure access to the footpath network and commuting.³⁸¹

3.5.21.2. The Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing.

3.5.21.3. OBJ/53-Taylor Wimpey's objection to this Order has been withdrawn,³⁸² the parties having reached agreement as to how Network Rail will access the level crossing site. Network Rail has requested modification of the Order to reflect this agreement³⁸³ and has provided a revised Order and Order plans.

The diversion

3.5.21.4. Users would be diverted to an existing underpass to the west and Elmswell level crossing to the east (a barrier protected, highway level crossing with an ALCRM score G4) using a mixture of new and existing routes. The maximum diversion for a user from the north side of the railway to the south would be around 860 metres.

SoM6

3.5.21.5. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

³⁸⁰ NR/INQ/95.

³⁸¹ NR/32-1 section 2.17.

³⁸² NR/INQ/100

³⁸³ NR/INQ/101

3.5.22. **S30 – Lords No 29**

SoM4

- 3.5.22.1. In the absence of other parties at the Inquiry with a particular interest in S30, Network Rail's written evidence was taken as read.
- 3.5.22.2. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9 day camera census undertaken during June/July 2016 recorded 44 pedestrian users. 4 people provided feedback on the use of S30 during the first round of public consultation. Based on the location of the crossing points, usage figures and the feedback from public consultation, Network Rail considers that the crossing is used regularly by a moderately small number of people to access the wider footpath network.³⁸⁴
- 3.5.22.3. The Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing.

The diversion

- 3.5.22.4. Users of the level crossing would be diverted along two new 2 metres wide unsurfaced public footpaths running parallel with and adjacent to the railway, one on the north side and one on the south side. Both footpaths would run eastwards from existing Footpath 025 Elmswell which crosses over the railway with a footbridge, approximately 230 metres to the west of Lords No. 29 level crossing. The new footpaths would each be approximately 230 metres long and would join existing Footpath 009 Elmswell, which runs perpendicular to the railway at Lords No. 29.

SoM6

- 3.5.22.5. Network Rail wishes to remove the proposed powers over plot 26, as sufficient working space would be provided by other plots³⁸⁵. Otherwise, it considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

3.5.23. **S31 - Mutton Hall³⁸⁶**

SoM4

- 3.5.23.1. Network Rail has identified that the level crossing has an ALCRM score of C6. A 9 day camera census undertaken during June/ July 2016 recorded 34 pedestrian users. 7 people provided feedback on the use of S31

³⁸⁴ NR/32-1 section 2.18.

³⁸⁵ NR/INQ/67.

³⁸⁶ Order plan sheet 15.

during the first round of public consultation. Based on the location of the crossing points, usage figures and the feedback from public consultation, Network Rail considers that the crossing is used relatively regularly by a small number of people to access the wider footpath network.³⁸⁷

- 3.5.23.2. The Order would confer powers to close the level crossing to all users and extinguish public rights of way over the crossing.

The diversion

- 3.5.23.3. Users of the level crossing would be diverted along a new footpath on the southern side of the railway and use an existing road bridge to cross the railway, before continuing northwest along the road or turning west along Footpath 20 Wetherden. The length of diversion from one side of the crossing to the other would be around 510 metres.
- 3.5.23.4. The RSA commissioned by Network Rail did not identify any road safety issues. Despite the RSA not having raised any issues, measures are proposed at the bridge, detailed in section 3.3 of the Design Guide (NR12) to address any perception of safety issues which users may have.³⁸⁸
- 3.5.23.5. Neither the Network Rail commissioned RSA nor the SCC commissioned RSA identified any issue with the proposed diversion route. Having considered evidence on traffic speeds submitted by Network Rail, Mr Russell was able to conclude that there was "*sufficient forward visibility for the observed traffic speed on the road to meet current highway design standards*".³⁸⁹ He was not called to give evidence on this crossing.
- 3.5.23.6. Whilst safety concerns are the reason given by SCC for objecting to this proposal, the only evidence provided is that of Mr French. Mr French confirmed in XXC³⁹⁰ that he does not have a highway safety or road safety qualification and was giving his "*observations as a rights of way manager*". Similarly, Mr Boardman, for the Ramblers' Association, confirmed in XXC that he was not giving evidence as a road safety expert, and that the views he expressed were his personal views.
- 3.5.23.7. With respect, Network Rail submits that little weight can therefore be given their evidence as to the suitability or convenience of the proposed diversion route. Ms Tilbrook sets out in some detail in her Proof why she considers the route is suitable and convenient. Network Rail suggests that the Secretary of State can conclude with confidence that a suitable and convenient alternative will be provided, and in relation to this crossing the Order confirmed without modification.

SoM6

³⁸⁷ NR/32-1 section 2.19.

³⁸⁸ ST XIC Day 15

³⁸⁹ OP/INQ/17

³⁹⁰ Day 15

- 3.5.23.8. Network Rail considers that the land and rights in land for which compulsory acquisition powers are sought are required in order to secure satisfactory implementation of the scheme. Furthermore, in its view there is a compelling case in the public interest for conferring those powers on Network Rail, which justifies interfering with the human rights of those with an interest in the land affected.

SoM10

Objector's proposed alternatives

- 3.5.23.9. With reference to the concerns of OBJ/23 regarding the proposed use of an overbridge, consideration was given to the possibility of diverting users west to use the underpass at Captains Lane. However, as the majority of the public rights of way lie to the northeast of the crossing, diversion of users to the west would result in a longer route, which Network Rail considers would be less convenient than that proposed.³⁹¹

3.6. **Statement of Matters 7 (SoM7)- The conditions proposed to be attached to the Deemed Planning Permission for the Order scheme**

- 3.6.1. Network Rail notes that planning conditions were discussed on Day 24 of the Inquiry. Revised conditions were tendered to the Inquiry at the conditions session which reflected the position as at that date: specifically, the agreement which had been reached between Network Rail and SCC (or their respective ecologists / ecology consultants) as to an appropriate ecology condition (revised condition 7). Network Rail and SCC were also agreed that the proposed condition 6 – relating to breeding birds – could be removed, on the basis that the measures contained within the condition were to be included in the (revised) Precautionary Method of Working. SCC confirmed that they were content that the proposed condition relating to archaeology could be deleted.
- 3.6.2. Network Rail identified at the conditions session the possibility that conditions 3 and 4, relating to landscaping, might not be necessary, given the modest scope of works comprised in the implementation of the Order. In light of the responses received from at least two of the local planning authorities since the conditions session, Network Rail does not pursue that point, and submits that the Secretary of State may proceed to consider the proposed conditions on the basis that the policy tests are met.
- 3.6.3. The Side Agreement between Network Rail and SCC has been summarised in a Note provided to the Inquiry³⁹². This addresses concerns raised by SCC (which were echoed by the Ramblers' Association) as to the processes which would be followed by Network Rail in exercising the powers conferred by the Order, leading up to the certification stage provided for by Article 16, and as to how SCC would

³⁹¹ NR/32-2 page 182.

³⁹² NR/INQ/122.

be provided with the necessary information to enable it to make the Legal Event Modification Order, which would follow on from closure of the crossings pursuant to the Order with consequent changes to the PRow network. Network Rail's position throughout has been that these are matters which were properly for a separate agreement, rather than needing to be provided for within the Order itself,³⁹³ however, Network Rail has provided a separate note which sets out the extent to which (and how) the provisions of the Side Agreement have allayed concerns expressed by SCC which were in turn reflected in the modifications pursued in OP/INQ/91. The Secretary of State's decision may properly record that SCC's concerns have been dealt with.

3.7. ***Statement of Matters 8 (SoM8) - Funding***

3.7.1. Network Rail's proposals for funding the Order scheme are set out in its Funding Statement (NR6). Dr Algaard confirmed that this remained the position in XIC. Network Rail has also provided confirmation from ORR that it is content for monies allocated to the Order scheme in Control Period 5 (CP5) to continue to be used during CP5 despite the possibility that its benefits may not be achieved during the same control period (see NR/INQ/19 paras 8-9 & Appendices 4 & 5). Network Rail has also provided a Note setting out the funding sought in respect of Control Period 6 (CP6); the level of funding likely to be available (by reference to HC 448 'Statement of Funds Available' for CP6); and the significant commitment made by Network Rail towards continuing its level crossing risk reduction work during CP6 (NR/INQ/25). Dr Algaard made clear, in Re-IX, that following the granting of funds to Anglia Route, it would be down to the Anglia Route, including Dr Algaard, to decide how to direct the funding. Network Rail considers that her commitment to the Order scheme, and the objectives it seeks to achieve, cannot be doubted.

3.8. ***Statement of Matters 9 (SoM9)- Whether statutory procedural requirements have been complied with***

3.8.1. Consultation concerns can be dealt with shortly. It is common for those opposed to infrastructure schemes to say that there has been inadequate consultation when in fact, what is meant, is that the promoter of the scheme has not made the changes they would wish to have seen made.

3.8.2. In Network Rail's judgement, as the consultation report³⁹⁴ makes clear, there has been meaningful, thorough and repeated consultation on the Order proposals, more than is required by the law or as a matter of policy. Mr Kenning and Ms Tilbrook have explained how those consultation exercises have informed development of the Order proposals, and how they have changed as a result of consultation. The Ramblers' Association's suggestion that pre-application consultation was flawed is simply not accepted. It is clear from the consultation

³⁹³ See, by way of example, Winkworth Sherwood's letters on this matter included within the clip of correspondence at NR/INQ/8

³⁹⁴ Core Document NR5

materials that safety was not the only objective sought to be achieved through the Order proposals.

3.8.3. Notwithstanding Mr Hodson's view that Network Rail's public consultation regarding S22 was inadequate, he confirmed he was not suggesting that there has been non-compliance with statutory requirements by Network Rail in the promotion of the Order. Furthermore, public agreement to the proposals is not a pre-requisite for confirmation of the Order, nor would it render the Order legally invalid.³⁹⁵

3.8.4. Network Rail has complied with the statutory requirements for consultation under the *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006*.³⁹⁶ It is not understood to be seriously disputed by any party, nor could such a contention be sustained.

3.9. ***Statement of Matters 10 (SoM10)- Any other relevant matters which may be raised at the Inquiry***

3.9.1. ***Order modifications supported by NR***

3.9.1.1. Network rail considers that substantial agreement has been reached on these matters. The Order itself is now essentially agreed between Network Rail and SCC (save in respect of any changes which would need to be made to reflect SCC's objections to the closure of specific crossings) and SCC no longer pursues the proposed modifications set out in its 'Updated Modifications' (OP/INQ/91). Network Rail has, however, provided a separate Note setting out its response to the modifications so pursued, and why they are not necessary, even though no longer pursued by SCC.

3.9.1.2. Network Rail has provided a copy of the Order revised to reflect the modifications which the Secretary of State is asked to make, together with revised Plans. These include:

- a) Insertion of a new Article 16A, which provides that the highway authority and Network Rail may enter into agreement with respect to various matters (specific examples of what such agreements may include being included in Article 16A(2)). This provision is intended to provide transparency to the Side Agreement which has been agreed between Network Rail and SCC, and to make clear the matters which may be the subject of such an agreement;
- b) Amendment to the proposals for S01, altering the length of Footpath 013 Brantham to be extinguished on the closure of the crossing (i.e. retention of the southern section of footpath 13);
- c) Removal of crossing S07 from the Order;

³⁹⁵ NR/INQ/109 paras 8-9.

³⁹⁶ NR/INQ/1, NR/INQ/27, NR/INQ/56. It is expressly agreed by SCC that those requirements have been complied with – see para 2.2 of the Statement of Common Ground (NR/INQ/30)

- d) Changes to temporary possession /access rights to reflect the agreements reached with landowners in respect of S69 (Bacton United '89 Football Club) and S29 (Taylor Wimpey UK Ltd).

- 3.9.1.3. The explanations for the proposed modifications have been set out in a number of Notes provided to the Inquiry,³⁹⁷ and are not repeated here.
- 3.9.1.4. To assist the Secretary of State, and at the Inspector's request, Network Rail has also provided information as to the changes that would likely need to be made to Schedule 2 of the Order, and to Order plans, if modifications pursued by other objectors to the Order were to be recommended by the Secretary of State³⁹⁸. To be absolutely clear, Network Rail is not asking that those modifications be made. Nor should the information provided (specifically, where it has sought to identify which provisions in para 3.48 of the DfT Guide to TWA Procedures might be engaged in a particular case) be taken as Network Rail suggesting that a particular modification can be made without issue. It will clearly be for the Secretary of State to decide in any particular case whether a modification could be made, consistent with that guidance. All Network Rail has sought to do in the Note provided is to identify which paragraphs it appears to Network Rail might need to be considered in a particular case to assist the Inspector.
- 3.9.1.5. In terms of Network Rail's position on the proposed modifications, there are only two which Network Rail would positively support if the Secretary of State were minded to make them: namely, the proposed amendments to the alignments of the new PRoW to the west of S24 and to the new PRoW to the south east of S28 (the change requested by Mr and Mrs Crack). Again, Network Rail wishes to reiterate that any such modifications would depend on the Secretary of State being satisfied that they could be made, consistent with the guidance in para 3.48 of the TWA Guidance, which is, ultimately, a decision for the Secretary of State and not for Network Rail.
- 3.9.2. **Order modifications requested by the Environment Agency³⁹⁹ (EA)**
 - 3.9.2.1. Network Rail understands the EA's position to be that it is treating the plan approvals required under the protective provisions in paragraph 2(3) of the Order as a consent akin to the *Environmental Permitting (England and Wales) Regulations 2016* (EPR) which should therefore retain the same scope (i.e. deemed refusal). Network Rail's position is that the protective provisions should remain as drafted in the filled-up Order, providing in paragraph 2(3)(b) for a deemed consent. This is for the following reasons of principle:
 - a) The protective provisions provide not for a consent equivalent to the EPR regime, but rather for the approval of detail; the in-principle decision on whether the works in a TWA Order should proceed rests firmly with the Secretary of State in deciding

³⁹⁷ NR/INQ/67, NR/INQ/86, NR/INQ/101,

³⁹⁸ NR/INQ/131.

³⁹⁹ NR/INQ/35.

whether to make the Order. At the time the protective provisions are implemented that in-principle decision will already have been made. A deemed refusal in line with the Agency's powers under the EPR is therefore neither required nor appropriate in the protective provisions. Furthermore, so far as Network Rail is aware, there is nothing in any EU Directive which prohibits deemed approval in relation to flood risk activity;

- b) The EA's position seems to miss the purpose of protective provisions being a streamlined process in place of any normal arrangements. It is usual in TWAO protective provisions (including those for Network Rail) to provide for deemed approval. The EA's own Boston Barrier Order (2017/1329)¹ provides for the Port of Boston's deemed plan approval of the Agency's authorised works. This post-dates the *Environmental Permitting (England and Wales) Regulations 2016*. As regards approvals by flood (land drainage) authorities, the other category of body that is covered by these protective provisions, the *Land Drainage Act 1991* also includes a deemed approval provision. It is therefore entirely appropriate that the protective provisions reflect this legislative position;
- c) The effect of the Agency's changes as they stand would also mean that either (a) the powers of the local authorities (as lead local flood authorities in respect of the Orders) would be increased, by extending a deemed refusal to them, or (b) in order to preserve the position regarding flood authorities the protective provisions would have to have different arrangements for each category of body, which would be awkward as the local authorities do not have deemed refusal under their powers under section 23 of the *Land Drainage Act 1991*;
- d) The Agency is not able to cite a made TWA Order which includes deemed refusal and there is no precedent for deemed refusal within a TWA Order;
- e) The Agency relies on the terms of Development Consent Orders (DCOs) under the *Planning Act 2008* and provides details of the Inspector's decision in relation to the M20 Junction 10A DCO application. However, despite what the Agency says in the second sentence of the fifth paragraph under the heading '*Deemed Consent or Deemed Refusal*', the position regarding disapplication of legislation under DCOs is different to that for TWA Orders. The *Planning Act 2008*, section 150, provides that an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision. The *Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015* sets out in Regulation 5 and Schedule 2 the list of prescribed consents. It includes a consent under section 109 of the *Water Resources Act 1991* for works affecting main rivers (which has since been included within the

Environmental Permitting regime) and environmental permit or exemption under the *Environmental Permitting (England and Wales) Regulations 2010* (which would now extend to cover the 2016 EP Regulations). If Network Rail were promoting a DCO, not a TWA Order, it would require the consent of the Agency to dis-apply these consents and would therefore be in a different position in negotiating protective provisions. That may explain the rather limited response from the applicant to the EA's case presented for the M20 DCO application, which did not address the substantive point at issue here;

- f) The TWA, however, allows for the disapplication of such consents without any requirement for this to be agreed by the consenting body concerned, and so with a TWA application the parties are coming at this from a different position, backed by legislation with a different policy. The form of protective provisions which include deemed planning approval are the standard that is to be found since the inception of TWA Orders in 1993 and which continues to date i.e. after the EP regime. This continued the private and hybrid Bill standard for the EA and its predecessors, which itself continues to date in hybrid Bills in Parliament promoting railway schemes, as in the *Crossrail Act 2008* and the recent *High Speed (London – West Midlands) Act 2017*⁴⁰⁰;
- g) All this clearly indicates that:
 - i. Deemed approval; is the form of provision the Secretary of State would expect to include for a railway scheme;
 - ii. Deemed approval is consistent with the policy of the TWA; and,
 - iii. Parliament is content with protective provisions in the form Network Rail proposes.
- h) The practical concern with deemed refusal is its unreasonableness. In effect, the EA need do nothing for two months, the plans would be refused and would delay the construction of Network Rail's scheme whilst the parties go to arbitration to resolve the deemed refusal. That is not consistent with the rest of the wording on planning approval and arguably robs of any practical effect the requirements not to withhold consent unreasonably as set out in Schedule 11, paragraph 2(3)(a)) and to use reasonable endeavours to respond within two months (Schedule 11, paragraph 2(4)).

3.9.2.2. If the EA's provisions were to be accepted it would effectively create an impediment to implementation of the Order. This ignores the fact that before the Secretary of State can make an Order, he must be satisfied that it is capable of being implemented without such impediment.

⁴⁰⁰ NR/INQ/35 Appendix 2-copy of Schedule 33, paragraph 52(3)(b).

Network Rail therefore submits that the Secretary of State should resist the EA's proposals for deemed refusal for the reasons given above.

3.10. **Conclusions**

- 3.10.1. Network Rail submits that there is a compelling case for this Order. It will deliver material safety benefits. It will deliver material operational efficiencies on the railway. It will allow for future enhancements of the railway network.
- 3.10.2. In order to operate a 21st century railway, capable of delivering the growth sought both nationally and within Anglia, Network Rail needs to address the issues presented by level crossings. This is particularly the case within Anglia, which has 771 level crossings, with a total FWI of 2.95, which is 25% of the overall national level crossing risk.⁴⁰¹
- 3.10.3. The detail of the Order scheme has been carefully developed. The Order proposals have been carefully appraised, and subject to extensive consultation.
- 3.10.4. Clearly, there will be impacts arising from the Order, for users of the crossings and for those whose land is subject to new PRow or other exercise of Order powers. However, when considered against the very real strategic benefits which would be achieved by this Order, it is Network Rail's position that any such impacts are very clearly outweighed.
- 3.10.5. Network Rail confirms that all procedural requirements have been met.
- 3.10.6. The Inspector is invited to recommend to the Secretary of State that the Order be made in the form sought, and the Secretary of State is respectfully requested to agree.

4. **THE CASES FOR SUPPORTERS**

The key points made by supporters, who did not appear at the Inquiry, in their written submissions were:

4.1. **General**

- 4.1.1. A supporter of the Order indicated that "5 years ago, a close relative of mine was hit by a train and killed when using a level crossing in Suffolk. Those types of crossing are dangerous and it is only a matter of time before someone is killed on them. It is ridiculous that people can just freely walk on the track without a sign or signal that tells them a train is coming".⁴⁰²

4.2. **S27 - Barrell's**

- 4.2.1. With reference to S27 - Barrell's, there was some support for the closure

⁴⁰¹ Dr Algaard PoE paras 2.2.1 and 2.3.2

⁴⁰² SUPP/1.

of footpath 005 Thurston from points P023 to P024 in favour of a new right of way from points P034 to P035 in order to reduce the extent of the new right of way required on the railway embankment, when compared to Network Rail's initial consultation proposal. It was suggested that this would minimise disturbance to habitats, which would be positive for wildlife and protect more of the countryside.⁴⁰³

4.3. **S11 – Leggetts**

4.3.1. Old Newton with Dagworth & Gipping Parish Council does not object to the rerouting of the one footpath affected within its area.⁴⁰⁴

⁴⁰³ SUPP/2.

⁴⁰⁴ SUPP/3.

5. OBJ/29 - THE CASE FOR SUFFOLK COUNTY COUNCIL⁴⁰⁵ (SCC)

5.1. SoM1- The aims of and the need for the Order scheme

Introduction

5.1.1. SCC is a statutory objector, as defined by rule 2(1) of the *Transport and Works (Inquiries Procedure) Rules 2004* and section 11(4) of the TWA.

5.1.2. Through this Order, as originally drafted, Network Rail sought to close 23 level crossings and to downgrade the status of one level crossing⁴⁰⁶ on mainline routes across the county of Suffolk. The Order would confer statutory powers on Network Rail, including powers to enable it to remove the crossings, to stop-up and divert multiple public rights of way which currently traverse the crossings, to create new rights of way for the purposes of providing acceptable alternative routes, and to compulsorily acquire land interests necessary for carrying out the authorised works.

5.1.3. SCC is the relevant Highway Authority, Streets Authority and Surveying Authority in relation to the local highway networks that would be affected by this Order. SCC is, therefore, responsible for ensuring that all public rights of way included in its network are fit for use and appropriately maintained. It must also ensure that any changes to the rights of way network are reflected in the definitive map and statement, which it must keep up-to-date.⁴⁰⁷

5.1.4. SCC objects to eight of the proposed crossing closures. Four of these objections are based on road safety concerns:

- i. S23 - Higham;
- ii. S27 - Barrell's;
- iii. S31 - Mutton Hall; and,
- iv. S69 - Bacton.

5.1.5. Two of SCC objections are based on deliverability grounds:

- i. S01 - Brantham Sea Wall; and,
- ii. S02 - Brantham High Bridge.

5.1.6. The remaining two objections are based on issues arising from the length of the proposed diversions and the impacts such diversions would have on the health and wellbeing of users:

- i. S22 - Weatherby; and,
- ii. S25 - Cattishall.

⁴⁰⁵ OP/INQ/109.

⁴⁰⁶ S18-Cowpasture Lane.

⁴⁰⁷ Wildlife and Countryside Act 1981, s53, tab 5 of the legal bundle (NR/INQ/63).

- 5.1.7. There is a clear overlap in the objections of SCC, FHDC and SEBC in relation to S22 and S25. For ease of reference, and to avoid unnecessary duplication, these submissions will, therefore, cross-refer to submissions made on behalf of FHDC and SEBC, making clear any points that are adopted by SCC.

Background

- 5.1.8. SCC is aware that this Order is being pursued by Network Rail simultaneously with two other Transport and Works Act Order ("TWAO") applications of similar import: the proposed *Network Rail (Essex and Others Level Crossing Reduction) Order* and the proposed *Network Rail (Cambridgeshire Level Crossing Reduction) Order*. It is understood that all three order applications rely on the same underlying strategic case and documentation, in particular the *Anglia CP5 Level Crossing Reduction Strategy (NR18)*.
- 5.1.9. These three order applications are also the first time that a TWAO has been sought, on such a county-wide scale, for a project which appears to have the sole purpose of closing and downgrading level crossings (with no other proposed 'works' to which such closures are ancillary to).⁴⁰⁸ SCC note that the Ramblers' Association has submitted legal submissions to the Inquiry questioning the appropriateness of the use of a TWAO for these purposes. In light of this, SCC submits that the Inspector must be satisfied that the use of a TWAO is lawful and appropriate for the purposes of this Order.

Network Rail's strategic case

- 5.1.10. The Inspector must also determine whether Network Rail has justified the need for this Order, including the need to close individual crossings included in the Order.⁴⁰⁹ Network Rail is relying on a three-fold strategic case to justify the general need to rationalise at-grade crossing points on the railway, namely to: (i) improve operational efficiency of the Network; (ii) increase the safety of those using and interacting with the railway; and, (iii) to save costs and ensure the efficient use of public funds.⁴¹⁰
- 5.1.11. It is clear that Network Rail accepts that those three 'strategic benefits' are not enough, simply taken by themselves, to justify the closure of a level crossing, but that a further 'balancing exercise' will need to be carried out to factor in other interests in the level crossing, including the local community.⁴¹¹ Network Rail's position is that an appropriate balance will be struck where a 'suitable and convenient' alternative route can be found as a replacement for existing users of the level crossing.⁴¹²

⁴⁰⁸ Mr Brunnen, who gave evidence in the position of Network Rail's Head of Level Crossing Strategy, agreed in XX that this is the first time Network Rail has used a TWAO to address the strategic need to close level crossings.

⁴⁰⁹ Statement of Matters, matter 1.

⁴¹⁰ Mr Brunnen's Proof of Evidence, para 14.3 and as confirmed through XX of Dr Algaard and Mr Kenning.

⁴¹¹ Dr Algaard and Mr Kenning XX of strategic evidence.

⁴¹² Mr Kenning XX.

- 5.1.12. The requirement for a 'suitable and convenient replacement for existing users' uses the wording set out in Annex 2 (p.105) of the DfT's *Guidance to the TWA Procedure*,⁴¹³ which elaborates on the statutory test, set down in section 5(6) of the TWA.⁴¹⁴ SCC has previously made submissions in relation to the interpretation and application of the section 5(6) test (NR/INQ/26 and OP/INQ/24) which will not be unduly repeated here.⁴¹⁵
- 5.1.13. It is worth noting at the outset of these submissions, that SCC accept, in principle, that level crossings may need to be closed to achieve the three-fold strategic aims and SCC is not raising an 'in principle' objection to Network Rail's 'strategic case' or to the Order as a whole. Indeed, SCC supports, in general, better rail services in Suffolk. SCC does, however, note that the Ramblers' Association has made 'in principle' objections to the strategic approach taken by Network Rail⁴¹⁶ and requests that the Inspector only recommend that the Order be made if he is satisfied that Network Rail's strategic case has been adequately justified.
- 5.1.14. In addition, SCC is cognisant that there is a potential for a precedent to be set by this Order and that, if the Secretary of State were to make this Order, then Network Rail may pursue similar projects in other parts of the country.⁴¹⁷ There is even a risk of precedent-setting in Suffolk itself, as this Order only addresses mainline crossings, with branchline level crossings expected to be pursued by a similar strategy at a later stage. It is, therefore, particularly important, bearing in mind the potential precedential effect of this Order, that the Inspector only recommend that the Order should be made if he is satisfied that Network Rail's strategy is justified and robust, or otherwise makes clear his conclusions on the merits of Network Rail's underlying strategic case.
- 5.2. **SoM2 - Alternatives considered by Network Rail**
- 5.2.1. Network Rail has consulted SCC during all phases of the project development of the Order through to the Order application. This process has both informed SCC of Network Rail's plans as well as provided Network Rail with an opportunity to consider concerns raised by SCC. It is agreed that Network Rail has sought to reduce the impact on users of the public rights of way network through the provision of alternative routes or through the provision of other routes to complement existing

⁴¹³ A TWA Guide to Procedures – Guidance on the procedures for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation (June 2006). Legal bundle tab 23.

⁴¹⁴ This requires that any TWAO "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." (TAB 1 of NR/INQ/63).

⁴¹⁵ The Councils would, however, highlight paragraphs 20-21 of OP/INQ/24 which highlights the limitations of what the section 5(6) test applies to under the TWA.

⁴¹⁶ Closing submissions on behalf of the Ramblers' Association, paras 3-31.

⁴¹⁷ Indeed, when the point was put to Mr Brunnen in XX that, if the Order is made, it will be of interest to Network Rail on a national scale, his response was that "everyone is interested in this".

routes. SCC nevertheless maintains objections to the eight level crossings referred to above on the basis that the proposed alternative routes would not be suitable and convenient replacements for the existing rights of way.⁴¹⁸

5.3. **SoM3 - Policy**

5.3.1. Whilst SCC and SEBC agree with Network Rail that the Secretary of State is not under a statutory duty to apply the test in section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), it is clearly a relevant consideration when determining a request for deemed planning permission⁴¹⁹.

5.3.2. SCC has maintained the position that it does not consider the above 8 proposals to comply with a number of relevant local transport policies and its Rights of Way Improvement Plan. This is on the basis that suitable and convenient alternative routes have not been demonstrated to exist for any of the above-mentioned proposals. In summary, SCC is consequently concerned that the proposals will reduce use of the rights of way network, access to the countryside and use of sustainable transport, contrary to a number of national and local transport and planning policies, including⁴²⁰:

- a) The Framework, which seeks, amongst other things;
 - (i) To promote sustainable transport, by giving priority to pedestrian and cycle movements, minimise conflicts between pedestrians, cyclists and vehicles and address the needs of people with disabilities in relation to all transport modes;
 - (ii) To promote healthy communities, by achieving places which are safe and accessible; and,
 - (iii) To protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.
- b) SCC's *Rights of Way Improvement Plan 2006-2016* (ROWIP) seeks, amongst other things, to improve safety of road and rail crossings as well as improving access to the countryside; and,
- c) Suffolk Local Transport Plan 2011-2031 (SLP) identifies '*that the public rights of way network can play an important role in rural areas and on the fringes of towns in providing traffic-free and safe routes for walking and cycling journeys*'. The SLTP aims include facilitating an increase in walking and cycling as one means of addressing its priority of improving the health of communities.

⁴¹⁸ NR/INQ/30 paras 2.1-2.3.

⁴¹⁹ OP/INQ/60 and NR/INQ/55.

⁴²⁰ OBJ/29/W1/R para 13-16, OBJ/29/W1 paras 67-85.

5.4. **SoM4 - The Level Crossings**

5.4.1. ***SCC's general approach to public rights of way 'alternative required' and 'suitable and convenient'***

5.4.1.1. As set out in NR/INQ/26, it is common ground between the parties that the statutory test set out in section 5(6) of the TWA should be read with the guidance contained within Annex 2 of the DfT's 'A Guide to TWA Procedures', which states:

'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'.

Furthermore, those words should be given their ordinary, common sense meaning, with reference to the concise Oxford English Dictionary 2011:

Suitable-right or appropriate for a particular person, purpose or situation;

Convenient-fitting in well with a person's needs, activities and plans involving little trouble or effort; and,

Replacement-a person or thing that takes the place of another.

SCC takes the term 'existing users' to mean any person who uses the public right of way at the time, and any person who might reasonably be expected to use the public right of way, considering its location and purpose.

5.4.1.2. It is also common ground that in considering whether an alternative route is suitable and convenient, account needs to be taken of its local environment, its relationship with the wider public rights of way network and the purpose and use of the existing route, having regard to: origin and destination points; desire lines; and, whether the route is for example a utility route or a leisure route. In addition, SCC and the Ramblers' Association consider that the following factors are also relevant:

- Length of the route;
- Maintaining desire lines to users' destination(s);
- Accessibility of the route, including the gradient of the route and any obstacles;
- Scenic view and the 'quality' of the route;
- Safety of the route;
- Surface of the route;
- Directness of the route;
- Width of the route, including the sense of space experienced by walkers;

- Risk of flooding; and,
- The public enjoyment of the footpath as a whole.

5.4.1.3. For the purposes of this Inquiry, at a practical level SCC considers that an existing public highway could, in theory, serve as a replacement to the existing right of way, provided that the suitable and convenient test (as defined by SCC) has been met. Following on from this interpretation of 'right of way', SCC considers that, where an alternative route (consisting of routes over which the public is legally entitled to pass and re-pass) already exists on the highway network, then the situation falls into a TWA section 5(6) sub-paragraph (a) scenario (an alternative right of way has been provided), rather than a sub-paragraph (b) scenario (an alternative right of way is not required).⁴²¹

5.4.1.4. Furthermore, 'has been ...provided' includes not only a situation in which an alternative right of way already exists on the network when the Order is applied for, but also where an alternative right of way has been provided through other means, which were progressing concurrently with the TWA process and have been completed. With reference to TWA section 5(6) sub-paragraph (b), SCC considers that an alternative right of way is not required where the existing public right of way to be extinguished is not used or is no longer necessary.⁴²²

5.4.1.5. The 'suitable and convenient' test, set out in the DfT's 'A Guide to TWA Procedures', applies to alternatives falling within TWA section 5(6) sub-paragraph (a). That is, alternatives which are proposed to be provided under the terms of the Order and also any existing route that is relied on as an alternative. In the latter case consideration should be given to the fact that the alternative route is already present on the highway network and yet the public use the right of way that is to be extinguished. Therefore, it will be important to understand the purpose for which each route is being used to assess whether the existing alternative can serve as a suitable and convenient replacement. It should also be borne in mind that the proposed diversion could result in the existing alternative route becoming more crowded/having a higher footfall than at present.⁴²³

5.4.2. **Other general matters**

Holding objections

5.4.2.1. In its statement of case,⁴²⁴ SCC set out four 'holding objections' to the Order as a whole. Following a side agreement entered into on 23 May 2018, SCC is pleased to clarify that it has withdrawn all of these holding objections. SCC is satisfied that the side agreement sets out a satisfactory procedure by which, in the event that the Order is made, further details of the works to be carried out at each crossing will be

⁴²¹ OP/INQ/24.

⁴²² OP/INQ/24.

⁴²³ OP/INQ/24.

⁴²⁴ See OP/INQ/05 which was added to SCC's statement of case following the Inspector's approval on 5 January 2018.

submitted for the approval by SCC prior to implementation. Furthermore, the side agreement has addressed SCC's remaining concerns in relation to the certification procedure under Article 16 of the Order, the principles for agreeing commuted sums and a mechanism for recording information on new and amended highway that will be necessary to allow SCC to make any necessary Legal Event Modification Orders under section 53 of the *Wildlife and Countryside Act 1981*.

- 5.4.2.2. SCC also welcomes a new section 16A that will be added to the Order. As a result of these developments, SCC no longer pursues any further modification to the Order, apart from those modifications relating to specific crossings.⁴²⁵

Safety risks of level crossings vs safety risks of roads

- 5.4.2.3. SCC has raised objections on safety grounds to four of the proposals: S23, S27, S31 and S69. SCC notes that there is a significant degree of overlap between its concerns in this regard and the position of the Ramblers' Association. SCC has a general concern that it was not designated as the overseeing authority in Mott MacDonald's RSAs as opposed to Network Rail.

- 5.4.2.4. It is clear from the evidence heard at the Inquiry that Network Rail has not carried out any kind of comparative assessment between the safety risk associated with using a level crossing against the safety risks associated with the diverted route.⁴²⁶ SCC has highlighted, in relation to S23, S27 and S31, comparative features indicating that the safety risks are greater on the diverted route than on the individual crossing in question. Whilst SCC accepts there is no recognised model or algorithm for comparing this risk, it does seem that in relation to these particular crossings, there was a lack of any kind of comparative assessment.

- 5.4.2.5. It also appears that Network Rail's approach to assessing the safety risks associated with the diverted routes is a world away from the approach it takes to assessing safety risks associated with its level crossings. For example, on multiple occasions, Ms Tilbrook relied on the fact that routes were already being used by pedestrians to indicate that they were safe to use or referred to the limited time which users would need to be present on a particular stretch of road. The point was put to Mr Kenning⁴²⁷ that in these scenarios, it appears that Network Rail is applying a much lower threshold to what is considered to be an acceptable safety risk on the road as opposed to on a level crossing.

- 5.4.2.6. In relation to the crossings which SCC has objected to on safety grounds there is, therefore, a concern that Network Rail's proposals for these crossings are simply "shifting the risk" from the crossing and onto the road. It is understandable that Network Rail is particularly concerned about safety on its level crossings and that it seeks to minimise this risk

⁴²⁵ As set out on p. 8 of the Explanatory Text table included in OP/INQ/91.

⁴²⁶ Mr Kenning XX on strategic matters; Ms Tilbrook XX on strategic matters; Mr Kenning XX on S23 and on S31; Ms Tilbrook XX on S31.

⁴²⁷ In cross-examination on S23.

to the greatest extent reasonably practicable. But SCC, as the Highways Authority, is similarly concerned about the safety of its road network and public rights of way. It is important that in relation to these three crossings, the overall impacts of the proposals on safety are considered.

5.4.3. **S01 - Sea Wall**

SoM4

- 5.4.3.1. SCC has two key points of objection in relation to S01. Firstly, SCC objects to what it considers to be an unnecessary extinguishment of the footpath running along the sea wall, which has highly valued views and amenity for users. Network Rail now says that it would retain that section. Secondly, SCC is not satisfied that the alternative route can be delivered and, particularly, questions whether Network Rail has sufficiently assessed the flood risk and accessibility constraints associated with the proposed diversion.
- 5.4.3.2. SCC objects to the proposed extinguishment of the stretch of Footpath 013 Brantham running along the sea wall. SCC have requested that the Inspector recommend the retention of this stretch of footpath,⁴²⁸ regardless of whether the level crossing should be closed. SCC maintains this position on the basis that the extinguishment of this stretch of footpath is not necessary for Network Rail to achieve closure of the level crossing.
- 5.4.3.3. Mrs Robinson explained that this is a highly valued stretch of footpath with "amazing views"⁴²⁹ of the salt marsh and surrounding wildlife, noting that even a cul-de-sac path has value.⁴³⁰
- 5.4.3.4. In response, Network Rail relied on the alleged concerns raised by Natural England. The distinct impression from Network Rail's written evidence and initial evidence provided at the Inquiry on Days 8 and 9 was that Natural England had raised specific concerns⁴³¹ relating to this stretch of footpath and that Network Rail had, as a result of these concerns (and having had regard to Natural England's position as a statutory consultee and potential statutory objector) altered the proposals. No evidence had, however, been provided by Network Rail to support this assertion or to clarify the specifics of Natural England's concern. Nor was it clear why the concern of Natural England had been held to overrule the contrasting concerns raised by SCC.

⁴²⁸ As marked on the design freeze and order plans in the updated modifications submitted by SCC on 9 May 2018.

⁴²⁹ Mrs Robinson S01 XIC.

⁴³⁰ Mrs Robinson's proof of evidence para 12.

⁴³¹ Mr Kenning's proof of evidence at 5.4L Ms Tilbrook's proof of evidence at 2.1.24 and see Ms Tilbrook's rebuttal for S01 at 2.2.3.

- 5.4.3.5. Indeed, it appeared from the evidence heard on Days 8 and 9,⁴³² that there were two different alleged issues relating to this stretch of footpath:
- i. The need to manage increased footfall, having regard to the proposed developments in the area, including developments under planning application B/15/00263/FUL/SMC⁴³³ and B/17/00441.⁴³⁴ This appeared to be a concern raised by Natural England.
 - ii. The potential added disturbance caused to ground nesting birds if there were paths either side of the reed bed area.⁴³⁵ This appeared to be a concern raised by Mott MacDonald's own team of ecologists.

The Inspector sought clarification on the specifics of these issues and, in particular, evidence of Natural England's concerns.

- 5.4.3.6. Network Rail provided further information during the adjournment of the Inquiry in April 2018. To SCC's surprise, this information made clear that at no stage during the preparation of this Order has Natural England ever raised a concern,⁴³⁶ or threatened to object, to the proposal at S01. Natural England clarified that there would be no impacts on the relevant designated sites,⁴³⁷ nor were the proposed closures considered likely to significantly affect the interest features for which the sites were notified.⁴³⁸ A technical note, dated 9 April 2018⁴³⁹ clarified that far from Natural England ever '*raising*' concerns, what actually occurred was a discussion, in passing, during a conversation on 17 November 2016 (which appeared to be focussed on the other proposed TWAOs in Essex and Cambridgeshire), during which Natural England were said to have:

'commented that they were happy to see the proposal to extinguish the section of footpath south of the level crossing at Sea Wall as they had concerns that future development, north of the crossing could lead to increased footfall adjacent to the SSSI if the public right of way south of the crossing were to be retained'⁴⁴⁰

⁴³² As well as the written evidence, see Mr Kenning's proof of evidence at 5.4L, Ms Tilbrook's proof of evidence at 2.1.24 and see Ms Tilbrook's rebuttal for S01 at 2.2.3.

⁴³³ NR/INQ/16, Referenced documents in Ms Tilbrook's evidence, Tab Q.

⁴³⁴ NR/INQ/16, Referenced documents in Ms Tilbrook's evidence, Tab R.

⁴³⁵ Which appears to be marked as predominantly "F1 – Swamp" and "B2.1 – Neutral grassland- unimproved" in Plan 2 of the Constraint Plans in Appendix A of Ms Tilbrook's Rebuttal on S01.

⁴³⁶ This was agreed to by Ms Tilbrook in XX on S01 on Day 16.

⁴³⁷ NR/INQ/82, Appendix A (briefing note dated 15.11.2016).

⁴³⁸ NR/INQ/82, Appendix B (letter dated 10 February 2017).

⁴³⁹ NR/INQ/83.

⁴⁴⁰ NR/INQ/83 p.2.

- 5.4.3.7. The development in question, B/15/00263/OUT appears to relate to the same development site as the B/15/00263/FUL/SMC, the decision notice and conditions for which have been provided to the Inquiry.⁴⁴¹
- 5.4.3.8. The first thing to note about any potential increased footfall arising from this development is that it is entirely irrelevant to any consideration of this Order. The impacts caused by that development are separate to, and completely unrelated to, Network Rail's proposals in relation to S01.⁴⁴² Any concerns that Natural England have with regards to it are, therefore, irrelevant considerations.
- 5.4.3.9. Secondly, even leaving aside its irrelevance, it is abundantly clear from the documentation provided that this development has its own planning conditions that are specifically designed to address any impacts caused by the development on the local footpath network and on the protected sites.⁴⁴³
- 5.4.3.10. Ms Tilbrook had to accept during cross-examination⁴⁴⁴ that Natural England would have been consulted on that planning application. That was the appropriate opportunity for any related concerns of Natural England to be addressed, not years later in relation to a separate TWA Order. Particularly as Network Rail's proposals would, if anything, cause a decrease in footfall on this stretch of footpath through creating a cul-de-sac route.
- 5.4.3.11. Network Rail's case in relation to the position of Natural England was inherently flawed and the information provided to SCC in evidence leading up to, and during, the Inquiry was confusing and has led to a significant waste of resource on the part of SCC. During cross-examination, Mr Kenning agreed that the statement in his proof at 5.4 was "*false or misleading at best*" and could only apologise to the extent that information was misleading or the situation had been misconstrued.⁴⁴⁵
- 5.4.3.12. In relation to the issue specified in point (ii) above, there was scant, if any, evidence to support this point. The only evidence appears to be a short statement at the bottom of pages 2-3 of the technical note⁴⁴⁶ that there would '*clearly be a positive effect on the existing disturbance to birds*' if this stretch of footpath was extinguished, referring to a one-line

⁴⁴¹ NR/INQ/16, Referenced documents in Ms Tilbrook's evidence, Tab Q.

⁴⁴² Ms Tilbrook accepted that Natural England's concerns related to matters outside Network Rail's proposals during XX on S01 on Day 16.

⁴⁴³ For example, condition 27, relating to the outline permission, requires work to public footpath 13 (the very footpath in question) prior to commencement of the first residential development and condition 47, relating to the full permission, requires a number of specific "highway works" prior to occupation, including various changes to the footpath and cycleway network. What is more, various conditions demonstrate that the planning authority was alive to the presence of nearby protected sites and relevant ecological receptors (for example, condition 40, 46 and 61).

⁴⁴⁴ Ms Tilbrook S01 XX Day 16.

⁴⁴⁵ Furthermore, Ms Tilbrook agreed that the Inspector should strike out the sentence starting with "Therefore, taking cognisance of the comments from the Natural England who wished to seek to ensure that the footfall to the ecologically sensitive area was managed..." in para 2.1.24 of her proof.

⁴⁴⁶ NR/INQ/83.

sentence in the *Habitats Regulations Assessment*, dated 20 January 2017.⁴⁴⁷ Ms Tilbrook accepted that there was no further documentary evidence on what the likely effect would be.⁴⁴⁸ We do, however, know that if this stretch of footpath were retained (as requested by SCC) there would be no change to the ecological screening reports' conclusions that there would be no likely significant effects caused by the proposals.⁴⁴⁹

- 5.4.3.13. SCC submits that, on the basis of the evidence now before the Inquiry, it is clear that the section of footpath running alongside the Sea Wall should be retained, regardless of whether the level crossing is closed. Mrs Robinson, on behalf of SCC, has explained the significant value of the path to users in the local area which must weigh heavily in favour of retention, particularly bearing in mind her evidence has been tested through cross-examination. By contrast, the only evidence provided by Network Rail are mere assertions that retaining the footpath will cause some (unspecified) disturbance to ground nesting birds (outside the protected areas). The retention of this stretch of footpath is entirely unrelated to, and unnecessary for, Network Rail's proposals at S01.
- 5.4.3.14. What is more Network Rail has now confirmed that Natural England would not object to S01, if this stretch of footpath were to be retained.⁴⁵⁰ This confirmation is documented in NR/INQ/108 by way of an e-mail, written by a legal adviser at Natural England, dated 24 April 2018. Pertinently, that e-mail notes the following:
- i. that '*closure of the level crossing and footpath section shown in blue to the north of the railway line will reduce recreational disturbance from current levels...*'; and,
 - ii. that '*the proposed housing development at Brantham (B/15/00263/FUL) secured recreational disturbance mitigation as part of the scheme design based on the current access situation*' (i.e. with the whole blue section and level crossing remaining open).

These are both points that were made by SCC and put to the Network Rail witnesses in cross-examination. Again, SCC emphasises that considerable time has been wasted at this Inquiry trying to boil down what exactly Network Rail's case was. When it was boiled down, it appeared misleading at best.

The diversion

- 5.4.3.15. Put shortly, SCC's concerns over the deliverability of the alternative route boil down to a lack of information. Mrs Robinson is the Area Rights of Way Manager for the East of the County and has worked in

⁴⁴⁷ NR/INQ/82, Appendix E, p. 4 (the second 'p.4' in the document).

⁴⁴⁸ Ms Tilbrook S01 XX, Day 16.

⁴⁴⁹ NR/INQ/83, bottom of p. 2.

⁴⁵⁰ Confirmed by Counsel for Network Rail on Day 22.

that role for 16 years. She has considerable experience of maintaining the rights of way network across Suffolk and is, therefore, well-versed in the local conditions on the ground. She has also been on site to review the proposals.⁴⁵¹ When asked if she had enough information to assess if the proposed alternative route will be a suitable and convenient replacement for existing users, her answer was a clear “no”.⁴⁵²

- 5.4.3.16. Mrs Robinson raised concerns over the flood risk associated with the stretch of proposed footpath that runs beside the reed bed, including photographic evidence of this part of the field with pools of water that have accumulated.⁴⁵³ She explained that she was “not sure the root causes have been dealt with” and highlighted that the flooding was not due to the sea coming over, but rather relates to a drainage issue.⁴⁵⁴ She was unclear what Network Rail were proposing as a solution and whether raising the level of the path would, for example, solve the issue.
- 5.4.3.17. Furthermore, Mrs Robinson explained that the stretch of new footpath running alongside the south side of the railway is at a gradient on what is currently uncultivated land that has shown signs of poor growing conditions for grass. The Order proposals suggest an unsurfaced path would be put in place here and she is, therefore, concerned that the new path will be slippery and potentially hazardous. Again, she provided photographic evidence to illustrate her concerns. She noted that any sign off from the Highways Authority that the new route was to its satisfaction would require sufficient time for her to properly assess what has been done, including, where necessary, sufficient time to allow the grass to grow.⁴⁵⁵
- 5.4.3.18. The response of Ms Tilbrook was, essentially, that these were all solvable problems that could be addressed at the detailed design stage.⁴⁵⁶ She noted in respect of flooding, there “would need to be a quite detailed schedule of works” but that she was satisfied this could be dealt with at this point.⁴⁵⁷ She noted that it would “*clearly not be suitable as it stands*” in photo 2 of Mrs Robinson’s proof assuming that this reflects the position of the path.
- 5.4.3.19. In relation to the new route, Network Rail’s case is that “*clearly what is on the ground now is not what we are proposing*”⁴⁵⁸, there would need to be a further stage of assessments to work up detailed designs.
- 5.4.3.20. The problem is that the detailed design stage post-dates the Order. It is simply not possible for SCC to accept that a suitable and convenient route can be delivered on the basis of the information before the

⁴⁵¹ Mrs Robinson S01 XIC.

⁴⁵² Mrs Robinson S01 XIC.

⁴⁵³ Mrs Robinson’s proof of evidence, p. 166.

⁴⁵⁴ Mrs Robinson S01 XX.

⁴⁵⁵ Mrs Robinson S01 XX.

⁴⁵⁶ Ms Tilbrook S01 XX.

⁴⁵⁷ Ms Tilbrook S01 XX.

⁴⁵⁸ Ms Tilbrook S01 XX and that it was “important to realise that what is on the ground now is not the final [product]”.

Inspector. If further details are needed to show that this is possible, then these should have been provided by Network Rail in advance of the Inquiry. Whilst it is true that the detailed design stage usually follows the making of a TWAO, in the specific circumstances of this Order, where Network Rail is *relying* on there being a deliverable suitable and convenient route to the existing use of the level crossing, such details need to be provided. Without them, SCC has had to object to this proposal.

- 5.4.3.21. Furthermore, it was of serious concern, in the context, that Ms Tilbrook had not even walked the route and, therefore, had a distinct lack of first-hand experience of site conditions.⁴⁵⁹ SCC submit that this limits the weight which can be placed on any assurances she has made.⁴⁶⁰
- 5.4.3.22. SCC has highlighted a site visit which took place on 14 September 2017 during which SCC Rights of Way Officers accompanied Network Rail bridge engineers. SCC maintains that the engineers were dependent on the Area Rights of Way Officer to estimate where the alternative routes and bridges in question would be. This emphasises the concerning lack of detail that has been provided by Network Rail with regards the proposed alternative route.
- 5.4.3.23. On the basis of the above submissions, SCC requests that the Inspector recommend removal of S01 from the Order.

5.4.4. **S02 - Brantham High Bridge**

SoM4

- 5.4.4.1. SCC also object to the closure of S02 due to concerns relating to the deliverability of the alternative route. More specifically, SCC are concerned about evidence of ground instability and soil erosion in the location where the proposed new stretch of footpath will run alongside the eastern side of the railway line and are not in favour of the additional stretch of footpath requiring walkers to navigate a cross-fall along the southern side of the field east of the railway line.
- 5.4.4.2. Mrs Robinson again gave evidence that there was insufficient information to properly assess whether the new route could be delivered. In relation to the cross-fall, she was unclear as to where exactly the path would run on the slope, explained how walking up a

⁴⁵⁹ Ms Tilbrook S01 XX.

⁴⁶⁰ As it does for any of the routes Ms Tilbrook has not walked. As an aside, Ms Tilbrook stated, in response to the question of whether she had walked the route (during cross-examination of S01) that it would have been unreasonable to put every member of the team on the stand. This appears to relate to the fact that the Mott MacDonald team has assessed the alternative routes through a mixture of different teams going out on site for various reasons at various times (e.g. ecologists and engineers). When asked, during cross-examination of strategic/overview matters, whether one person had “walked the route” of the existing and alternative route at each crossing in order to compare the experience from the perspective of a user, Ms Tilbrook was unable to confirm that this had occurred. SCC submit that if that had been the case, it would have been simpler to have one person called to the stand with direct experience of each crossing.

slope on a cross-fall would be “awkward to walk” and SCC “wouldn’t put a path on a side slope” in this way.⁴⁶¹

- 5.4.4.3. In relation to her concerns over ground instability, Mrs Robinson illustrated using photographs that she had taken that there were demonstrable changes of level between two fences currently on site and erosion indicated at the edge, as well as evidence of rabbit burrows.⁴⁶²
- 5.4.4.4. Overall, she made clear, during cross-examination, that her concerns related to a lack of certainty over “where the route is to go and the land over which it is proposed to go”. She recognised that there would be a detailed design stage after the Order is made but highlighted that the stability issues are already known to SCC and the landowner, noting that it did not seem prudent to propose a route where such stability issues exist and suggesting that geotechnical surveys should have been done.
- 5.4.4.5. Network Rail’s response to these concerns was of a similar nature to S01, that there will be a further stage for the approval of detailed designs. SCC reiterates the submissions already made in relation to S01 as to why such details are necessary at this stage of the process in the context of this TWAO.
- 5.4.4.6. It is particularly surprising that Network Rail has not carried out any assessments of the relevant ground conditions at S02. Ms Tilbrook simply asserted that she did not consider loading to increase as a result of the proposals.⁴⁶³ She seemed to base this on her understanding of footways and her assessment that a low number of people were using the field. Network Rail’s proposals will, however, be actively directing people to use this stretch of land as a new right of way, which is designed to exist in perpetuity. That footpath will be used by the public and will need to be maintained by the Highway Authority. It did not appear from Ms Tilbrook’s evidence that the impact of these factors had been properly considered by Network Rail.
- 5.4.4.7. Furthermore, as Mrs Robinson clarified, it is clear this stretch of land already has a stability issue, the causes of which are unknown. It may be that the ground instability has nothing to do with loading.⁴⁶⁴ Mrs Robinson noted that she has experience of addressing landslides in other parts of the county which can be difficult to deal with and may require very large works and re-profiling.⁴⁶⁵ The key point is, however, that SCC simply does not have enough information to determine whether a footpath can be delivered here.
- 5.4.4.8. Regarding the cross-fall, the LIDAR data relied upon by Ms Tilbrook fails to properly account for the walked experience due to the interaction of the gradient and direction of travel.

⁴⁶¹ Mrs Robinson S02 XIC.

⁴⁶² Mrs Robinson S02 XIC.

⁴⁶³ Ms Tilbrook’s proof, para 2.2.33.

⁴⁶⁴ Mrs Robinson stated that she was “not sure that it is a loading issue that is causing [the] instability issue”, S02 XIC

⁴⁶⁵ Mrs Robinson S02 XIC.

- 5.4.4.9. Similar to S01, it also appears that Network Rail was unaware of conditions on the ground (and had failed to provide its own engineers with appropriate information) prior to a site visit on 14 September 2017 (6 months after the Order was deposited). As can be seen from the design freeze proposal for S02, a footbridge is proposed in a location in which Network Rail now agree no bridge is needed.⁴⁶⁶
- 5.4.4.10. SCC submits that even a cursory site visit would have shown the inappropriateness of the proposed footbridge. Mrs Robinson was clear that she would have “absolutely” expected Network Rail to have assessed whether or not a bridge was necessary before depositing the Order and SCC submits that this failing undermines the confidence which the Inspector can have in Network Rail’s assessment procedures. Furthermore, this is a very good example of why joint site visits, early on in the preparations for the TWA Order, between SCC rights of way officers and the Network Rail team, would have saved a lot of unnecessary expenditure incurred by SCC.
- 5.4.4.11. On the basis of the above submissions, SCC request that the Inspector recommend removal of S02 from the Order.

5.4.5. **S22 - Weatherby**
SoM4

- 5.4.5.1. SCC considers that S22 has distinctive characteristics. The crossing is located in the heart of Newmarket and is a vital connection point between the southern and northern parts of the town. The 9-day census picked up a total of 3,597 pedestrian users and 442 cyclists, with an average of 412 pedestrian users and 55 cyclists using the crossing per day.⁴⁶⁷ During cross-examination, Mr Prest noted that this was “one of the top footpaths re-use” that he’s seen. It is clear that S22, located right next door to the local football ground⁴⁶⁸ and a field of allotments, is used by local residents for everyday utility purposes, to connect to shops, schools, neighbours and general amenities.
- 5.4.5.2. Network Rail’s proposal to close this crossing has caused considerable upset to the community of Newmarket and widespread opposition by local residents. FHDC made clear, from the outset of the Inquiry, that it did not consider the case for closure to be justified. SCC stated in opening that it was not persuaded that Network Rail had explained persuasively why the crossing needed to be closed.⁴⁶⁹ It sought further clarification on this matter through the Inquiry process.
- 5.4.5.3. It is abundantly clear, having now heard Network Rail’s evidence at the Inquiry on S22, that it has failed to justify closure of this crossing. SCC,

⁴⁶⁶ Ms Tilbrook S02 XX.

⁴⁶⁷ Ms Tilbrook’s proof of evidence at 2.13.5 and Mr Prest’s proof of evidence at 19.7.

⁴⁶⁸ It is notable that Newmarket Town FC has also objected to the closure of S22, see further the e-mail from Mr Edwards, the Secretary of Newmarket Town FC, dated Monday 19 March 2018 (OP/INQ/54).

⁴⁶⁹ Mr Woodin’s proof of evidence on S22 at para 12.

therefore, refers to, and adopts, the closing submissions made in this regard on behalf of FHDC.⁴⁷⁰

The diversion

- 5.4.5.4. Notwithstanding the above conclusion, SCC submits that even if Network Rail could justify the need to close S22, it has not provided a suitable and convenient replacement route for existing users for the following reasons.

Length and gradient

- 5.4.5.5. SCC considers that for many users of the crossing, the alternative route will cause considerable increases in journey times, due to its additional length. Mr Woodin had provided time estimates for additional journey time of 6 minutes one way for users travelling from the junction of New Cheveley Road and Cricket Field Road to the Rookery Health Centre on Fred Archer Way.⁴⁷¹ Ms Tilbrook provided a number of suggested routes which users may walk, concluding that additional journey time would vary from less than one minute to approximately 8.75 minutes one way.⁴⁷² Of course, the additional time will depend on users' origins and destinations.
- 5.4.5.6. As Mr Woodin makes clear, an addition of just 6 minutes can be significant in a context of short utilitarian journeys.⁴⁷³ In circumstances where people are using S22 to access local schools and basic services, an additional 10-15 minutes can be enough to put somebody of walking the route altogether. Dr Wood highlighted the example of a local resident who can access her children's school in five minutes via the level crossing but for whom it will take 15-20 minutes via the alternative route.⁴⁷⁴
- 5.4.5.7. Furthermore, the added length must also be considered in combination with the gradient of the proposed route. Ms Tilbrook responded to the Councils' concerns over added gradient by citing technical LIDAR data comparing various gradients on both the existing and alternative routes. However, this appears to miss the point. As Mr Woodin explained, during cross-examination, this LIDAR data fails to show the walked experience and users' perception of steepness. And, it is users' perception of the route that will determine if they will use it.

Quality

- 5.4.5.8. Furthermore, Mr Woodin gave persuasive evidence on the difference in quality of the walking routes, noting the "less attractive urban walking environment" on the alternative route, compared to the more interesting

⁴⁷⁰ Paras 6.1.4-6.2.21 below.

⁴⁷¹ Mr Woodin's proof of evidence at paras 15-16.

⁴⁷² Ms Tilbrook's rebuttal on S22 at para 2.2.30, with time estimates updated in XIC.

⁴⁷³ Ms Tilbrook agreed that "time will be more of an issue" for users accessing the route for utility purposes (Ms Tilbrook S22 XX).

⁴⁷⁴ Dr Wood's proof of evidence at para 10 and appendix 1.3, Q6.

streetscape on the existing route which has a “feel of being quicker”.⁴⁷⁵
The difference in quality between the routes is evident from the photos in Appendix A to the DIA.⁴⁷⁶

Increase in car journeys

- 5.4.5.9. Mr Woodin stated in evidence that he considered that users will choose to do one of three things if the crossing is closed:
- i. continue to walk for their journey but put up with the inconvenience;
 - ii. use a car, or other mode of transport, to carry out their journey; or,
 - iii. not carry out the journey at all.
- 5.4.5.10. The fact that Network Rail’s proposals are likely to put people off walking is of serious concern in a context in which both the DfT and SCC are seeking to encourage walking for shorter journeys and to support a more active public.⁴⁷⁷
- 5.4.5.11. Mr Razaq, the Director of Public Health for SCC, has also raised concerns over the negative public health implications of Network Rail’s proposal for S22 stating that, in his professional opinion, the detour involved will “deter people from walking and cycling forcing some to use motorised transport which, in turn, is likely to have a negative impact on activity levels”.⁴⁷⁸ Mr Razaq highlights the risk of isolation to individuals,⁴⁷⁹ particularly (but not exclusively) older members of the community.⁴⁸⁰
- 5.4.5.12. What is more, both FHDC⁴⁸¹ and Cambridgeshire County Council both echo these points.⁴⁸²
- 5.4.5.13. Ms Tilbrook accepted that there is a risk that people would use a car as a result of the proposal⁴⁸³ but considered this to be at an acceptable level, noting in response to a question put by Dr Wood, “we accept there may be some transference to cars, but not to the level that would cause a significant impact in terms of air quality or traffic”.
- 5.4.5.14. However, Mott MacDonald have not carried out any traffic modelling⁴⁸⁴ or, indeed, *any* further assessment of the likely increase in car use (by, for example, asking users of the crossing whether they are likely to use

⁴⁷⁵ Mr Woodin S22 XIC.

⁴⁷⁶ Appendix C to Ms Tilbrook’s rebuttal on S22.

⁴⁷⁷ See, for example, the Department for Transport’s Cycling and Walking Investment Strategy 2017, extracts of which are appended to Mr De Moor’s proof of evidence (see for example p. 7 of the strategy) and the Suffolk Walking Strategy 2015-2020 (OBJ-29-C13), both of which seek to make walking the natural or “default” choice for shorter journeys.

⁴⁷⁸ Mr Razaq’s proof of evidence, included as appendix 1 to Mr Woodin’s proof of evidence, at para (f).

⁴⁷⁹ At para (l).

⁴⁸⁰ Cf Ms Tilbrook’s rebuttal on S22 at 2.9.2.

⁴⁸¹ Ms Noonan’s proof at para 23.

⁴⁸² See e-mail dated 9 May 2017, included as appendix 1 to Mr Woodin’s proof of evidence.

⁴⁸³ Ms Tilbrook S22 XIC and XX.

⁴⁸⁴ Ms Tilbrook S22 XX.

their car instead of the alternative route). As a result, it remains unclear on exactly what basis Ms Tilbrook reaches this conclusion.

- 5.4.5.15. There is, of course, a simple answer to Ms Tilbrook's response. If people are choosing to use their cars instead of walking the alternative route, then the alternative simply cannot be a '*suitable and convenient replacement*' for them.

Diversity Impact Assessments

- 5.4.5.16. Network Rail accepts that it must discharge its public sector equality duty, under section 149 of the *Equality Act 2010*, in relation to its proposals and has thereby carried out a Diversity Impact Assessment – Scoping Report⁴⁸⁵ in relation to the project as a whole and, more specifically, diversity impact assessments (DIA) in relation to particular level crossings. S22 is one of the level crossings for which a DIA was held to be required.⁴⁸⁶
- 5.4.5.17. Yet, it was only following a request by Mr Woodin,⁴⁸⁷ on behalf of SCC, that the DIA for S22 was disclosed as an appendix to Ms Tilbrook's rebuttal.⁴⁸⁸ The first thing to note about this DIA is that it is lacking almost any verification information. There is no author and no date for when the document was produced. In the table under '*Step 7: Sign off*', the '*DIA Owner*' is left blank, as is the '*Senior Manager*' notwithstanding that the document itself notes that '*[s]ign-off should be by someone who can approve policy, programme or budget changes*'. The only person who has signed the document is Mr Day, a Liability Negotiation Manger for Network Rail (designated as the '*Superuser*' for quality assurance purposes) and he did so the day before rebuttals were due to be exchanged (29 January 2018).
- 5.4.5.18. Ms Tilbrook could not explain why the DIA was not signed off by the Mott MacDonald team, noting that she was not a DIA specialist.⁴⁸⁹ When asked by the Inspector how she could be confident in the document, if she does not know who has produced it, her response was vague, noting that she was aware of the work done by the team and pointing to the past tense used in the DIA Overview Report⁴⁹⁰ as indicating that a DIA had already been done when that overview document was published.⁴⁹¹
- 5.4.5.19. Network Rail subsequently submitted a note,⁴⁹² setting out how the DIAs for the Order were prepared by the Mott MacDonald team and the dates when all of these DIAs would have been first issued to Network Rail.

⁴⁸⁵ NR/INQ/38.

⁴⁸⁶ NR/INQ/38, p. 94 and para 2.3.

⁴⁸⁷ Mr Woodin's proof of evidence, paras 19-26.

⁴⁸⁸ Ms Tilbrook's rebuttal, appendix C.

⁴⁸⁹ Ms Tilbrook S22 XX.

⁴⁹⁰ NR/INQ/15, Referenced documents to Ms Tilbrook's evidence, appendix L.

⁴⁹¹ Ms Tilbrook S22 XX and response to the Inspector's questions.

⁴⁹² NR/INQ/80.

No explanation was given for the lack of information included in the DIA for S22 and continued reliance was placed on the past tense used in the Diversity Overview report.⁴⁹³

- 5.4.5.20. In light of the above submissions, SCC maintains that the DIA is an unreliable document that the Inspector cannot have confidence in.
- 5.4.5.21. Notwithstanding the above, the content of the DIA is also cause for concern. It is clear that the 'evidence base' in Step 2 relies heavily on the census data which, as noted by FHDC⁴⁹⁴, would fail to reflect any non-visible disabilities. The only further evidence appears to be highly-generalised population statistics for the entire district of Forest Heath and what appears to be a desk-based assessment of the location of local amenities.⁴⁹⁵ It goes without saying that the section on consultation, which relies on the two rounds of public consultations suffers from the same defects as have been highlighted by FHDC. The point was put to Ms Tilbrook that the section on 'impact' (Step 3) does not read as an objective assessment, but rather as a document clearly written from Network Rail's perspective. Indeed, much of the argument reflects Network Rail's own evidence at the Inquiry.
- 5.4.5.22. Whilst it is accepted that the document is a Network Rail document, the Public Sector Equality Duty (PSED) must be carried out objectively, '*exercised in substance, with rigour and with an open mind*'.⁴⁹⁶ This is particularly important in the context of a TWAO, for purposes of which the Secretary of State, as the decision-maker, will also need to satisfy his own PSED which is non-delegable.⁴⁹⁷ SCC submit that Network Rail has not provided the Secretary of State with adequate means by which to do so.
- 5.4.5.23. Due to the above inadequacies in the DIA process, the SCC submits that the Inspector cannot be confident that the potential impact of Network Rail's proposals on users with disabilities and more elderly users has been adequately assessed.

The status of rights of way

- 5.4.5.24. As is noted in the submissions of FHDC, during the course of the Inquiry a dispute arose about the existence of rights of way at S22. SCC's position is that whilst there are no recorded rights of way at S22 on the Definitive Map and Statement, this public record is not conclusive on the matter.

⁴⁹³ NR/INQ/80 para 9.

⁴⁹⁴ Para 6.2.6 below.

⁴⁹⁵ "The presumed desire lines are based on the identified location of residential areas and community facilities within the immediate vicinity of the crossing. The development of a more substantive picture of local desire lines for the crossing and associated routes could be achieved through cordon survey interviews with users at fixed locations and times." (DIA on S22, p. 8) It does not appear that any such cordon surveys have been undertaken.

⁴⁹⁶ *Haque v Hackney LBC* [2017] PTSR 769 at [12].

⁴⁹⁷ *R (Brown) v SSWP* [2008] EWHC 3158 (Admin) at [94].

- 5.4.5.25. What is more, SCC has maintained throughout these proceedings that this Inquiry procedure is not the appropriate forum in which to determine the matter.⁴⁹⁸ SCC submits that the procedures established under section 53(3)(c) and (6) of the *Wildlife and Countryside Act 1981* provide the appropriate forum to determine whether or not a public right of way exists at S22. This involves the making of a Definitive Map Modification Order by the surveying authority and, if required, a rights of way Inquiry.⁴⁹⁹
- 5.4.5.26. SCC welcomes the Inspector's ruling on this issue, dated 27 April 2018, which SCC understands to accord with the approach suggested by SCC's in its Supplementary Submissions on the Rights of Way Status of S22 Weatherby (OP/INQ/33). Following this ruling, SCC understands that S22 will be treated in the same way as the other level crossings in the Order which do have recorded public rights of way. If the Inspector does not consider Network Rail's strategic case for closure of the level crossing to be justified on the evidence⁵⁰⁰, including on 'suitability and convenience' then the Inspector must recommend removal of this proposal from the Order.
- 5.4.5.27. For the avoidance of doubt, and in response to a question posed by the Inspector on 23 May 2018, SCC does not consider that the undetermined status of rights at S22 prevents the Inspector from recommending closure of the crossing. But the Inspector can only recommend closure if he is satisfied that he would reach the same conclusion if public rights of way do exist at S22.

Conclusion

- 5.4.5.28. In light of all the above, including the adopted submissions made on behalf of FHDC, SCC submits that Network Rail has failed to justify the need to close S22 and to close S22 via diversion. In any event, the diversionary route is not a suitable or convenient replacement for existing users. SCC, therefore, requests that the Inspector recommend removal of this proposal from the Order.

5.4.6. **S23 - Higham**

SoM4

- 5.4.6.1. SCC objects to this proposal on grounds of pedestrian safety, most notably relating to:
- i. the proposed road-side walking along Higham Road;
 - ii. lack of visibility at the junction of Footpath 005 Higham and Coalpit Lane; and,

⁴⁹⁸ OP/INQ/20 at para 6 and OP/INQ/33.

⁴⁹⁹ In April 2018, SCC received an application, made under section 53(5) of the *Wildlife and Countryside Act 1981*, to modify the Definitive Map and Statement so as to register rights of way at S22.

⁵⁰⁰ This will include an assessment of whether a suitable and convenient route has been provided.

- iii. insufficient assessment of the appropriate positioning of a crossing point at the junction of the A14 Westbound on-slip road with Coalpit Lane.

Unsafe roadside walking along Higham Road

- 5.4.6.2. Network Rail's proposed alternative route directs users along a stretch of Higham Road that is unsafe⁵⁰¹ and, therefore, unsuitable as a replacement route. Mr Woodin, the Rights of Way and Access Manager for SCC responsible for the public rights of way and open access network in Suffolk gave clear evidence, during examination in chief, that this stretch was "not safe to walk on" and, furthermore, "many users of [SCC's] network will not perceive it to be safe either".⁵⁰² He explained that the available verges were so narrow to be "of little use to a pedestrian" and noted the blind bend at the War Memorial. The photos he had taken whilst on site clearly demonstrated the issue. Mr Woodin asked the Inspector to question where a pedestrian would fit in the second photo on page 123 of his proof of evidence, showing two vehicles passing along the route. To ask the question is to make the point.
- 5.4.6.3. Mr Woodin's concerns are supported by the independent Road Safety Audit carried out by Capital Traffic at the request of SCC, recommending that '*pedestrian facilities along Higham Road should be improved...*' It is unfortunately unclear whether this section of the proposed alternative route has been assessed by Network Rail's RSAs. The GRIP Stage 1 RSA appears to have used a plan that does not indicate the alternative route and no further assessment of S23 appears to have been undertaken by subsequent Mott MacDonald RSAs.⁵⁰³
- 5.4.6.4. Network Rail is not proposing any measures on this stretch of route according to its design freeze proposals, albeit Ms Tilbrook did subsequently accept in evidence that "there will be some work to do" referring to possible vegetation cut back.⁵⁰⁴ This vague admission cannot, however, allay SCC's concerns.
- 5.4.6.5. It is, perhaps, more concerning that Network Rail was prepared to rely on the fact that the existing verges are currently being used as linkages between the rights of way network in the area.⁵⁰⁵ The fact that a stretch of highway may currently be being used by pedestrians⁵⁰⁶ does not mean it is a safe stretch of highway to actively divert users to. SCC has made this position clear throughout the Inquiry. Network Rail must

⁵⁰¹ Mr Woodin S23 XIC, Higham Road is "not safe to walk on".

⁵⁰² Network Rail has accepted throughout the Inquiry that perceptions of safety are relevant to considering whether an alternative route is suitable and convenient (Ms Tilbrook XX on overview matters).

⁵⁰³ When the point was put to Ms Tilbrook during cross-examination, she asserted that she had had conversations with the RSA team leader which confirmed there had been an assessment. There is, however, no documentary evidence that SCC is aware of which can show a RSA that assessed the alternative route.

⁵⁰⁴ Ms Tilbrook S23 XX.

⁵⁰⁵ Ms Tilbrook's rebuttal on S23 and S24 at 2.1.5.

⁵⁰⁶ Particularly in circumstances when Ms Tilbrook confirmed that no census had been undertaken to record how many people presently use the highway (in response to questions put by the Inspector).

assure the Inspector that the diverted routes are safe when considered as routes that users are being actively encouraged to use.

5.4.6.6. Ms Tilbrook also noted that users would only be on this stretch of road for 7.5 minutes during which time they could expect to be passed by 9 vehicles based on the Network Rail traffic count data. However, the time users are expected to spend on this stretch of highway is irrelevant. If the highway in question is unsafe then it is unsafe whether users are there for 1 minute or 10 minutes. A collision on the road will occur in a matter of seconds.

5.4.6.7. The question is simply whether the route is adequately safe for pedestrians to use. Ultimately, the Inspector will need to exercise his judgement on the matter, but SCC submits he should have regard to both Mr Woodin's evidence, the Capital Traffic recommendation and the fact that this is a stretch of rural road operating under the national speed limit on which drivers will not expect to see pedestrians.

Diversion of Footpath 001 Higham

5.4.6.8. SCC consider it would have been preferable to divert Footpath 1 leading up to S23 to within the field side boundary as documented in the proposed modifications submitted by SCC on 9 May 2018. Mr Woodin explained that this would avoid a significant stretch of roadside walking which would remove his objection in this regard. SCC highlight that there would be no need for the "compelling case to take rights over private land"⁵⁰⁷ to create this path, if the matter were to be agreed with the landowner (thereby, avoiding the need to compulsorily acquire rights over land). Ms Tilbrook considered that an attempt to purchase the land by agreement would not have happened as Network Rail has never proposed diverting the path in this way.⁵⁰⁸

5.4.6.9. SCC submits that an opportunity here has been lost.

Lack of visibility

5.4.6.10. SCC are also concerned over the lack of visibility for pedestrians on Footpath 005 Higham crossing Coalpit Lane to reach the connecting footpath proposed as part of the alternative route for S24. Mr Woodin explained that this is a well-trafficked stretch of road and visibility, particularly when facing south towards Barrow, is very poor.⁵⁰⁹ Mr Woodin suggested the need for vegetation cut back and a pedestrian refuge created in the verge to allow pedestrians to assess when it is safe to cross the road.⁵¹⁰ The Capital Traffic RSA similarly highlighted visibility as an issue at this location and recommended that visibility, which complies with LTN 2/95 Table 1 is ensured.

⁵⁰⁷ Ms Tilbrook's rebuttal on S23 para 2.1.8. In any event, SCC further queries why the avoidance of an unsafe stretch of road for diverted users could not constitute such a compelling need.

⁵⁰⁸ Ms Tilbrook S23 XX.

⁵⁰⁹ Mr Woodin S23 XIC, as demonstrated in photographs supplied by Mr Woodin in his proof on p. 124.

⁵¹⁰ Mr Woodin proof of evidence on S23, para 33.

- 5.4.6.11. Network Rail are not suggesting any mitigation. In fact, Ms Tilbrook accepted that visibility would be at a distance two steps below the standard and that this would require a "departure" (as a further step below a "relaxation" of the guidance requirement).⁵¹¹ Although Ms Tilbrook did not consider there to be any issue with the creation of a pedestrian refuge on the verge,⁵¹² Network Rail are, nevertheless, not proposing any such mitigation formally as part of their proposals. As currently proposed, the junction between the footpath and Coalpit Lane is not acceptable.
- Further assessment necessary at the junction of the A14 westbound on-slip road*
- 5.4.6.12. The Capital Traffic RSA recommended that a collision/conflict study should be carried out to understand how/why collisions are occurring at the junction of the A14 Westbound on-slip road and Coalpit Lane. Ms Tilbrook agreed that Mott MacDonald could have factored such information in a Stage 1 RSA, but that was not done. Mr Haunton, who carried out the Capital Traffic RSA explained that the proposed alternative route is asking people to cross at a point where there appears to be vehicle conflicts taking place (mentioning tyre tracks noticed on site that did not correspond to the layout of the junction and the fact that crashmap data indicated incidents had been occurring there over a number of years).
- 5.4.6.13. In response to the Inspector's questions he confirmed that the outcome of such a study could be to make significant changes to the layout of the slip road or to relocate the crossing point or look for an alternative footway diversion. In short, it could question the acceptability of the diversion route being proposed by Network Rail.⁵¹³ Mr Russell, on behalf of the Ramblers' Association, confirmed that he did not disagree with anything Mr Haunton said in relation to the collision study.
- 5.4.6.14. SCC submit that the Inspector will be unable to recommend Network Rail's proposal in relation to S23 in the face of such uncertainties.
- 5.4.6.15. Finally, SCC further notes the recognition by Network Rail that it failed to apply for, and obtain, an extension to the *Suffolk County Council (Parish of Higham) (Footpath 1) (Temporary Closure) Order 2016*,⁵¹⁴ which expired on 19 July 2017. The footpath over the level crossing is currently unlawfully obstructed which is unacceptable. Mr Woodin made clear that "under no circumstances" would SCC accept the diversion authorised by this Temporary Closure Order as a permanent route.⁵¹⁵
- 5.4.6.16. On the basis of the above submissions, SCC request that the Inspector recommend removal of S23 from the Order.

⁵¹¹ Ms Tilbrook S23 XX.

⁵¹² Ms Tilbrook S23 response to the Inspector's questions.

⁵¹³ Mr Haunton S23, response to the Inspector's questions.

⁵¹⁴ OP/INQ/83.

⁵¹⁵ Mr Woodin S23 XIC.

5.4.7. **S25 - Cattishall**

SoM4

- 5.4.7.1. SCC objects to this proposal on the basis that the alternative route is not suitable and convenient and the proposal to close the crossing conflicts with relevant local transport and planning policies.
- 5.4.7.2. In relation to planning policy, SCC refers to, and adopts, the submissions made on behalf of SEBC.⁵¹⁶
- 5.4.7.3. SCC considers that the alternative route proposed by Network Rail at S25 is not a suitable and convenient replacement for existing users due to its length. Mr Woodin explained that the diversion would result in a significant detour which would add an extra 30 minutes on a round-trip which would be enough, in his view, to deter people from walking.⁵¹⁷
- 5.4.7.4. During cross-examination, Mr Woodin stated "I still say that there will be inconvenience in these proposals and that that level of inconvenience will be enough to stop people - [there is] no science to this - but we know as professionals that there are tipping points where an additional length and the nature of the diversion is enough to cause people to consider alternative means of making their journeys."⁵¹⁸
- 5.4.7.5. Mr Woodin's concerns over the increase in length to the alternative route are echoed by Mr White on behalf of the local planning authority. It is submitted that their evidence, collectively, should be afforded significant weight, having regard to their combined experience in assessing how the rights of way network is used. What is more, Mr Razaq has also raised concerns, from a public health perspective, of closure of S25.⁵¹⁹
- 5.4.7.6. In terms of Network Rail's assessment of the alternative route's suitability, Ms Tilbrook agreed that the data she relied on supported Mr Woodin's view that the crossing is used for mixed purposes, both for leisure and utility purposes. Her evidence places great reliance on the census undertaken in 2016 and consultation responses to determine who was using the crossing and what they were using it for,⁵²⁰ and to thereby conclude on the suitability and convenience of the alternative route.
- 5.4.7.7. Yet this data fails to reflect the planned strategic growth in the vicinity of the crossing and the expected increase in users who will be using the crossing to access other parts of Bury St Edmunds. To take a snapshot view of use of the crossing in the summer of 2016, prior to occupation of the Taylor Wimpey site (as well as prior to the opening of the Sybil Andrew Academy) runs the risk of severely misinterpreting how the crossing fits into the local community. When considering 'existing

⁵¹⁶ Paras 7.2.1-7.2.4 below.

⁵¹⁷ Mr Woodin S25 XIC.

⁵¹⁸ Mr Wooding S25 XX.

⁵¹⁹ Mr Woodin's proof of evidence on S25, Appendix 1.

⁵²⁰ Ms Tilbrook S25 XX.

users', SCC submits that regard must be had to the future development of the surrounding area and the additional users that this will bring.

- 5.4.7.8. It appears from the combined evidence of Mr Kenning and Ms Tilbrook that Network Rail agree that occupiers of the Taylor Wimpey site, to the south of the crossing need to be considered but not the expected occupiers of the North-East site. SCC considers that the planned changes to this location, including the expected use from both sites, should have been factored in. Once the development to the North-East is brought forward, S25 will no longer link to countryside immediately to the north,⁵²¹ but to part of the urban environment of Bury St Edmunds. It is likely that in such circumstances, the crossing will be used to a much greater extent for utility purposes, in which case, an extra 30 minutes to a round trip will be even more significant.⁵²²
- 5.4.7.9. As Mr Woodin put it, during cross-examination "*...this area is developing so rapidly and in such a dynamic way that what is true today won't necessary be true next year or the year after.*"
- 5.4.7.10. On the basis of the above submissions, SCC request that the Inspector recommend removal of S25 from the Order.

5.4.8. **S27 – Barrell's**

SoM4

- 5.4.8.1. SCC objects to this proposal on safety grounds, specifically in relation to the proposed roadside walking along Barrell's Road, including Barrell's Road bridge. Mr French, a rights of way officer for SCC, gave evidence illustrating why he considered that this route was not suitable, highlighting the gradient on approach to the bridge which restricted visibility of oncoming vehicles which combined with limited stretches of uneven grass verge on either side. He provided photographic evidence to the Inquiry, including photos demonstrating the impact of sun glare on driver visibility in these conditions.
- 5.4.8.2. The Capital Traffic RSA documented this visibility problem across both the Barrell's Road bridge and the bridge to the east. Mr Haunton explained that the RSA recommended that one of the level crossings should be retained with an appropriate section of linking footpath created to avoid the need for this roadside walking. In short, Mr Haunton considered the visibility to be "so lacking over both bridges" that no practicable solution could be found.⁵²³
- 5.4.8.3. Network Rail are proposing mitigation measures at Barrell's Road bridge, through which they propose to clear vegetation from the road and provide a new white lining edge marking to delineate a safe space for

⁵²¹ Ms Tilbrook confirmed that you reach the countryside "just to the north of the railway" in response to questions by the Inspector.

⁵²² Ms Tilbrook noted that generally speaking leisure walks are considered to be less time critical, S25 XX.

⁵²³ Mr Haunton S27 XIC. During his evidence, Mr Haunton further noted that the stopping distances over the humpback bridges would increase on the downhill gradient, along with an increase in speed when applying the same throttle.

pedestrians, as well as provide a safe standing area for pedestrians on approaches to the bridge. Network Rail is not proposing any mitigation measures for the unnamed bridge to the east. SCC does not consider that the proposed mitigation would address its safety concerns. In particular, Mr Haunton noted that any road markings would likely be worn away quite quickly by the wheels of passing vehicles. Low sun would also lessen drivers' ability to see any such markings.

Proposed improvements-lack of information

5.4.8.4. During evidence in chief, Ms Tilbrook accepted, in relation to Barrell's Road bridge, that "there is some further work to do at detailed design stage here", mentioning a potential for re-profiling the verges. She also mentioned the potential for advanced warning signs, as something "that could be considered". However, no further details have been provided to either SCC or the Inspector on what exactly Network Rail is proposing to do at this crossing. It is, unfortunately, too little too late.

5.4.8.5. Without such information, or an indication of how safety concerns could satisfactorily be addressed, SCC, as the Highway Authority, must object to this proposal. Mr French stated that he was still unclear whether the verges would be replaced with at grade or kerbed area.⁵²⁴ When asked by the Inspector if the mitigation now being proposed is something he would say lay outside the types of solutions he considered when he did the audit, Mr Haunton stated that he preferred not to comment "until I have actually seen a plan of what is proposed".

85th percentile speed

5.4.8.6. The Ramblers' Association highlighted, during cross-examination, that no 85th percentile speed figure had been provided by Network Rail to assess safety on this stretch of road. The 85th percentile speed referred to in para 2.3.7 of Ms Tilbrook's rebuttal proof was, in fact, the 50th percentile speed (which equated to the mean speed). Ms Tilbrook was unable to explain why the 85th percentile speed was missing, but a note from Network Rail (NR/INQ/96) alleged this was caused by there "not being enough traffic to establish a statistically reliable 85th percentile figure".

5.4.8.7. Network Rail's response does not make any sense, having regard to Mr Russell's explanation of how such percentile figures are calculated.⁵²⁵ Mr Russell explained that an 85th percentile figure can always be calculated, from any data set, but the question will be the level of confidence that can be given to it. Put shortly, the greater the sample size, the greater the level of confidence. What is more, Mr Haunton thought that an automatic traffic count carried out over the course of a week would give enough data to give 85th percentile, bearing in mind there were around 80 vehicles a day.

⁵²⁴ Mr French S27 XIC.

⁵²⁵ Mr Russell S27 XIC.

- 5.4.8.8. SCC submits that the lack of an 85th percentile figure is unexplained and undermines the reliability of Network Rail's assessments, particularly bearing in mind Mr Russell's comments that he would never submit a highway design that did not use the 85th percentile speeds "for the simple reasons that the Highway Authority would reject it because the guidance requires 85th percentile speeds".⁵²⁶

Perceptions of safety

- 5.4.8.9. SCC again emphasise that the Inspector will need to consider not only if the proposed alternative is safe, but also whether it will be perceived as safe. Mr Haunton's account of his experience at Barrell's Road bridge was telling. He was wary of approaching traffic and felt there was a certain reliance on drivers to take appropriate action, noting "we didn't dwell in the area, [we] took photos and moved on".⁵²⁷

- 5.4.8.10. On the basis of the above submissions, SCC request that the Inspector recommend removal of S27 from the Order.

SoM2-alternative

Missed opportunity-Footpath 005 Thurston

- 5.4.8.11. In a similar vein to the lost opportunity to divert Footpath 001 at S23, SCC submits that there was a lost opportunity in relation to S27 and Footpath 005 Thurston. As clarified during evidence, Network Rail changed its proposals to the north of S27 by moving Footpath 005 Thurston to the east (to run alongside the boundary between Mr Le Mar's and the Braces' properties). Mr Kenning explained⁵²⁸ that Mr Le Mar had raised concerns that walkers may cut through diagonally across his field if an additional stretch of footpath ran along the southern boundary (as had been suggested as part of the Round 2 consultation proposals). Mr Kenning added that Network Rail also considered there to be potential long-term management issues associated with the south-running footpath, due to the limited space available for it on Network Rail's land.⁵²⁹
- 5.4.8.12. Mrs Brace, however, gave evidence on a number of concerns she and her husband have about the new proposals which would create a new footpath running alongside their property. Mr Kenning also accepted, in cross-examination, that there was still enough room for a 1.5 metre footpath within Network Rail land along their southern boundary.
- 5.4.8.13. SCC were unaware of the changes to the proposal until deposition of the Order.⁵³⁰ SCC considers that a workable solution to the S27/S28 crossings would have been to retain Footpath 005 Thurston in situ, to keep one of the crossings open and to add in a new stretch of linking

⁵²⁶ Mr Russell S27 XIC.

⁵²⁷ Mr Haunton S27 XIC.

⁵²⁸ Mr Kenning S27 XIC and XX.

⁵²⁹ Mr Kenning S27 XIC and XX.

⁵³⁰ Mr French S27 XIC, noting that this was the reason for paragraph 15 of his proof of evidence which notes the inconsistencies between the Round 2 consultation materials and the Order proposals.

footpath along Network Rail land to the south of Mr Le Mar's property. This would have avoided any need for any roadside walking along Barrell's Road.

5.4.8.14. Mr French explained that this would have further avoided the need to erect a footbridge and fencing to cater for the proposed footpath on the eastern side of Mr Le Mar's field. Mr French clarified that whilst SCC does not usually like fenced in footpaths of 1.5 metres wide,⁵³¹ these will be acceptable where expedient.⁵³² Mr French would have considered it expedient to allow a fenced in footpath in these circumstances.⁵³³

5.4.8.15. It is unfortunate that this opportunity for a workable solution was missed.

5.4.9. **S31 - Mutton Hall**

SoM4

5.4.9.1. SCC objects to this proposal on safety grounds associated with diverting users onto the road bridge on U4622. Mr French explained that he did not consider visibility at the bridge to be sufficient due to the bends in the road on both approaches.⁵³⁴ This problem is clear from the photographs provided in his proof and is evident on site.

5.4.9.2. SCC is concerned that Network Rail's proposals will not reduce safety risks for users but, instead, merely shift the risk from the railway to the road. There has been no attempt by Network Rail to compare the safety risks between the two modes of access in order to assess this.⁵³⁵

5.4.9.3. Mr Prest confirmed that S31 is not a high risk crossing, has an ALCRM score of C6 and has had no reported incidents.⁵³⁶ Mr Prest agreed that the sightlines at the crossing were very good,⁵³⁷ indeed in normal conditions the downside sightlines are five or six times over the required minimum.⁵³⁸

5.4.9.4. While it is certainly true that there is a safety risk associated with all level crossings, Mr Brunnen accepted in cross-examination that "*any level crossing open to the public today is fit for use today*".⁵³⁹ In light of the above facts, there would appear to be limited safety concerns associated with S31.

⁵³¹ Responding to an assertion by Mr Kenning that the Highway Authority was "not really supportive of having fenced corridors that are 1.5m wide as a footpath".

⁵³² Mr French S27 XIC.

⁵³³ Mr French S27 XIC.

⁵³⁴ Mr French S31 XIC.

⁵³⁵ Mr Kenning S31 XX; Ms Tilbrook S31 XX.

⁵³⁶ Mr Prest S31 XX.

⁵³⁷ Mr Prest S31 XX.

⁵³⁸ Mr Prest's proof of evidence at 27.9.

⁵³⁹ Mr Brunnen XX noting, however, that this does not mean Network Rail does not have concerns about the crossing or want to improve/change them in the longer term.

- 5.4.9.5. By contrast, SCC considers that the proposed diversion requires users to navigate a fast-moving rural road over a bridge with limited visibility on which drivers would not be expecting to see pedestrian users. SCC recognises that Network Rail has proposed some mitigation measures,⁵⁴⁰ but these do not alleviate SCC's concerns.
- 5.4.9.6. SCC reiterates that perception of safety is key when considering replacement rights of way for pedestrian users. If a route is perceived as unsafe, it can put pedestrian users off using it. Network Rail accepts that the crossing at S31 is being used regularly by a small number of people to access the wider footpath network,⁵⁴¹ as is demonstrated by the high proportion of users that were documented as using the crossing on a Saturday.⁵⁴² S31 acts as a connection to the wider footpath network and means of access for users seeking leisure and recreational walks. There is a real risk that users will not perceive the connection point at the road bridge as safe enough for use.
- 5.4.9.7. On the basis of the above submissions, SCC request that the Inspector recommend removal of S31 from the Order.
- 5.4.10. **S69 – Bacton**
SoM4
- 5.4.10.1. SCC objects to this proposal principally on safety grounds; namely, that the proposed stretch of road-side walking along B1113 Broad Road and use of the Pound Hill underpass are not safe to divert walkers to.
B1113-Broad Road
- 5.4.10.2. SCC considers that it is not safe to divert users along the stretch of Broad Road on the alternative route unless a suitable footway is provided. Mott MacDonald's RSA agrees, having highlighted a risk of collisions here due to the variable standard of verge and the likelihood of pedestrians walking within the carriageway.⁵⁴³ The RSA recommends "that a suitable footway is provided to enable pedestrians to continue along Broad Road without walking within the carriageway". The plan attached in Appendix B to that RSA, clearly marks that this recommendation applies to the entirety of Broad Road in between Footpath 14 and Pound Hill. The designer's response to the problem raised was:
*'Agreed – Further consideration of footway provision will be given.'*⁵⁴⁴
- 5.4.10.3. In light of this, it is surprising to say the least that Network Rail is not suggesting any footway provision on this stretch of route. It is even

⁵⁴⁰ NR12 at 3.3.

⁵⁴¹ Ms Tilbrook proof of evidence at 2.19.7.

⁵⁴² 14 users on Saturday 2 July 2016 (out of a total of 38 users over 9 days) see Ms Tilbrook's proof of evidence at 2.19.5.

⁵⁴³ NR16, Suffolk Stage 1 Road Safety Audit (GRIP 2 Review), p. 9 at 2.12.1.

⁵⁴⁴ NR16, Suffolk Stage 1 Road Safety Audit Response Report, p. 16 at 2.31.1.

more surprising having regard to the Capital Traffic RSA which also documented the risk posed to diverted walkers being struck by vehicular traffic on this stretch of the route with an even more specific plan attached as appendix B, marking the area in question as the northern part of B1113 Broad Road. Mr Russell, on behalf of the Ramblers' Association, was in complete agreement that a footway be provided with an absolute minimum width of 750mm, but ideally of 900mm.

- 5.4.10.4. Ms Tilbrook nevertheless maintained that a formal footway was not required,⁵⁴⁵ although she recognised that some works would be needed to be done to the verge. As no specific details were given, however, it is not possible for SCC to respond in any meaningful way to this suggestion.
- 5.4.10.5. Ms Tilbrook noted in her rebuttal that it was considered that the RSA issues "pertained to the southern section of the Broad Road route shown" and that the length of verge walking retained had since been reduced.⁵⁴⁶ SCC disputes that the reduction in length of roadside walking mitigates the safety concerns associated with this route.
- 5.4.10.6. Ms Tilbrook also appeared to rely on the fact that this stretch of Broad Road was already being used to connect from Footpath 13 to Footpath 4.⁵⁴⁷ SCC repeats the submissions already made above: it is not acceptable for Network Rail to rely on the existing use of a stretch of road to demonstrate that it is a safe diversion.
- 5.4.10.7. Ms Tilbrook noted that the Capital Traffic RSA had not explicitly said a footway needs to be provided.⁵⁴⁸ Whilst this is true, Mr Haunton was clear in his evidence that this recommendation had been couched in general terms in part because he had not done an assessment of how much verge was available and did not know if a footway would be feasible in capacity terms. Notably, when asked by the Inspector if he had undertaken any appraisal of how much verge there might be available, his response was that they had not done so because he did not think it would have been particularly safe in some locations to undertake such measurements. Indeed, Mr Haunton explained that he had elected to drive a lot of this route and did not think it was an appropriate place to stop and walk along the carriageway, which explains why there are no photos in the RSA.⁵⁴⁹ On this basis, it cannot be assumed that the Capital Traffic recommendation does not support the provision of a footway, in fact Mr Haunton noted that it "*would [have been] nice to recommend putting a footway through...*".⁵⁵⁰

Pound Hill Underpass-safety

⁵⁴⁵ Ms Tilbrook S69 XX.

⁵⁴⁶ Ms Tilbrook rebuttal on S69 at 2.2.6-2.2.7.

⁵⁴⁷ Ms Tilbrook rebuttal on S69 at 2.2.8.

⁵⁴⁸ Ms Tilbrook S69 XX by the Ramblers' Association.

⁵⁴⁹ Mr Haunton S69 XIC.

⁵⁵⁰ Mr Haunton S69 XIC.

- 5.4.10.8. It was clarified during the Inquiry that Network Rail is not proposing to provide a footway under the underpass itself, but rather to replace the approaching verges on both sides of the eastbound side with new footway (with kerbing) so as to allow a safe standing area for pedestrians.⁵⁵¹
- 5.4.10.9. The Capital Traffic RSA illustrates the safety risks associated with the underpass, having raised a risk to diverted walkers of being struck by vehicular traffic at Pound Hill. SCC does not consider that Network Rail's proposed mitigation adequately addresses the level of risk. Mr Kerr, a Definitive Map Manager within the Rights of Way and Access Service, highlighted that a nearby development for 47 dwellings was granted planning permission subject to a series of conditions requiring improvement works to be carried out to the Pound Hill underpass. These specifically required a traffic management system to be put in place.⁵⁵²
- 5.4.10.10. Clearly, the expected increase in use of Pound Hill by those associated with the new development required there to be much more significant improvement measures than Network Rail has proposed, notwithstanding that Network Rail's proposal is expected to, similarly, result in an increase in use of this highway.⁵⁵³ Ms Tilbrook, again, relied upon the census data⁵⁵⁴ to conclude that the numbers of people being diverted did not justify traffic management measures.⁵⁵⁵ She did not, however, have a figure in mind as to how many additional users justified such a scheme.⁵⁵⁶
- 5.4.10.11. SCC considers that, in order to divert users to the Pound Hill underpass as part of a permanent diversion, better mitigation measures are required.
- Pound Hill Underpass-flood risk*
- 5.4.10.12. SCC has also raised concerns that the Pound Hill underpass is prone to flooding and that the cause of the flooding originates on Network Rail land.⁵⁵⁷ Mr Kenning appeared to accept, during cross-examination, that further investigation was needed to consider this issue but took the view that such investigation should be carried out by the Highway Authority.⁵⁵⁸ This is not acceptable. Network Rail are proposing to divert pedestrians away from a recorded public right of way at the crossing and towards the Pound Hill underpass. Network Rail accepts

⁵⁵¹ NR12 at 3.4.1.2. It was not clear from the Design Freeze whether the footway would be provided under the underpass as well.

⁵⁵² Further details can be found in OP/INQ/51.

⁵⁵³ For the avoidance of doubt, SCC is not concerned with any perceived cumulative effect as a result of both the development and closure of the level crossing, as the development has been conditioned so that it will only be occupied after the mitigation measures have been put in place.

⁵⁵⁴ Ms Tilbrook accepted that the census was carried out outside the football seasons (XX by the Ramblers' Association).

⁵⁵⁵ Ms Tilbrook S69 XX.

⁵⁵⁶ Ms Tilbrook in response to questions by the Inspector.

⁵⁵⁷ See further OP/INQ/59 at paras 1-2.

⁵⁵⁸ Mr Kenning S69 XX.

that it must show that the proposed diversion will be suitable for pedestrian use as a replacement for the existing right of way. It is, therefore, up to Network Rail to investigate any potential impediments to the proposed route. The burden and cost of doing so should not rest with the Highway Authority.

- 5.4.10.13. Three notes have now been submitted setting out the parties' positions on the cause of flooding at Pound Hill (OP/INQ/59, NR/INQ/87 and OP/INQ/87). SCC maintains its position that the cause of flooding originates from Network Rail land. In any event, it is not convinced that Network Rail have properly investigated the matter or suggested any appropriate mitigation to address the issue. Ms Tilbrook has agreed that flooding is a relevant consideration when determining if a route is a suitable and convenient replacement⁵⁵⁹ and that flooding is an issue at Pound Hill.⁵⁶⁰
- 5.4.10.14. On the basis of the above submissions, SCC request that the Inspector recommend removal of S69 from the Order.

5.5. **SoM7- Conditions**

- 5.5.1. Mr Andrew Murray-Wood, Senior Ecologist at SCC, had submitted a proof of evidence documenting a few outstanding issues in relation to the proposed ecology condition no.7. Following a joint site visit on 22 May 2018 and further work between the parties, SCC is pleased to confirm that the condition is agreed. The final version requires development to be carried out in accordance with the *Precautionary Method of Works: Legally Protected Species, 25 May 2018*, unless adherence to a revised version is approved in writing by SCC. Condition no. 6, which seeks to protect nesting birds, is no longer necessary, as adequate safeguards are provided by condition no. 7.
- 5.5.2. SCC is content that there is no need for a condition requiring archaeological investigation⁵⁶¹. SCC does not raise an objection to any of the other conditions set out in NR10⁵⁶².

⁵⁵⁹ Ms Tilbrook XX on strategic matters.

⁵⁶⁰ Ms Tilbrook S69 XX.

⁵⁶¹ OBJ/29/W1 para 56.

⁵⁶² Confirmed by Ms Golden at the conditions session.

5.6. ***SoM9-Statutory procedural requirements***

5.6.1. As regards consultation with SCC, Network Rail has complied with the statutory requirements for consultation under the *Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006*⁵⁶³.

5.7. ***SoM10- Any other relevant matters***

Inquiry process

5.7.1.1. Finally, SCC does wish to highlight the considerable resources that it has had to expend in terms of officer time and money both in the years leading up to and during this Inquiry process. As Mr Kerr stated in evidence, it has "*taken up an extraordinary amount of time*" and indeed has become almost a full-time job for some SCC officers.⁵⁶⁴

5.7.1.2. SCC maintains that a significant amount of the resources expended could have been avoided if there had been better engagement earlier on in the process between Network Rail and the highways and rights of way teams. Unfortunately, there are numerous examples, including the following two:

- i. Joint site visits between representatives of SCC and Network Rail early on in the process would have addressed a number of unknowns at a much earlier stage, preventing SCC officers from trying to decipher how things might work on the ground and providing an opportunity for further solutions to be worked out prior to the Inquiry. Officers have remained unclear about exactly where new stretches of footpath were intended to go or why certain infrastructure was being offered. The ecology site visit occurred just one day before the scheduled session on conditions.
- ii. Mr Kerr's proof of evidence contains an entire section on a number of discrepancies between the Order plans and the Definitive Map. As Mr Kerr states,⁵⁶⁵ despite SCC having provided Network Rail with its rights of way record in digital form in October 2015, the draft Order plans were not provided to SCC for checking. The inconsistencies in this documentation required Mr Kerr to give evidence on the issues.

5.7.1.3. SCC wishes to make clear, however, that it echoes the sentiments raised by another objector during the Inquiry, in relation to the considerable work that Network Rail has had to do in relation to this Order. SCC is aware that this has been no small feat. Nevertheless, SCC raises these concerns with the hope that lessons may be learnt from this Inquiry experience, particularly if Network Rail seeks to pursue similar Orders in the future.

5.8. ***Conclusions***

⁵⁶³ NR/INQ/30 para 2.2

⁵⁶⁴ Mr Kerr XIC on overview matters.

⁵⁶⁵ Mr Kerr's proof of evidence at para 33.

5.8.1. For the reasons provided above, SCC considers that eight of the proposed crossing closures are not acceptable and do not provide suitable and convenient alternative routes for users. It therefore requests that these eight crossing closures are removed from the Order.

6. OBJ/27 - THE CASE FOR FOREST HEATH DISTRICT COUNCIL⁵⁶⁶ (FHDC)

6.1. SoM1- The aims of and the need for the proposed scheme

6.1.1. Forest Heath District Council (FHDC) is the local planning authority for the area in which S22-Weatherby is situated and is a statutory objector⁵⁶⁷ to the proposal to close this crossing.

6.1.2. FHDC, has three key grounds of objection:

- i. Network Rail has not sufficiently justified the need to close this crossing in this manner and at this time;
- ii. The proposal would have an unacceptable adverse impact on the local community in Newmarket; and,
- iii. The alternative route is not a suitable and convenient replacement for existing users.

6.1.3. There is a clear overlap in the objections of FHDC and SCC in relation to S22. For ease of reference, and to avoid unnecessary duplication, these closing submissions will, therefore, cross-refer to submissions made on behalf of SCC, making clear any points that are adopted by FHDC.

Failure to justify the need to close the crossing

6.1.4. Network Rail agrees that there is a 'balancing act' to be carried out when assessing whether or not to close any level crossing.⁵⁶⁸ It is telling that for S22, Cambridgeshire County Council, SCC, FHDC, Newmarket Town Council, the Ramblers' Association and numerous local residents and community groups, representing many different groups of users of the level crossing, all consider that the balance comes down in favour of keeping the crossing open. Any consideration of the evidence before this Inquiry will clearly demonstrate that they are right. Network Rail has failed to demonstrate any significant public benefit arising from closure of the crossing.

⁵⁶⁶ OP/INQ/110.

⁵⁶⁷ As defined by rule 2(1) of the Transport and Works (Inquiries Procedure) Rules 2004 and section 11(4) of the Transport and Works Act 1992.

⁵⁶⁸ Mr Brunnen XX, Dr Algaard XX and Mr Kenning XX on strategic matters.

Safety risk

- 6.1.5. In terms of any reduction in safety risk, Network Rail accepts that the specific safety risks associated with S22 were not a relevant consideration when deciding whether to close the crossing. Mr Brunnen was clear, in his evidence on strategic matters, that the specific safety risks associated with each level crossing (most clearly expressed in their individual ALCRM scores) was not relevant to the decision to close the crossing⁵⁶⁹ and Mr Prest agreed, during cross-examination in relation to S22, that the ALCRM score was not relevant to the decision to close the crossing.⁵⁷⁰
- 6.1.6. Whilst Mr Kenning did emphasise the 'high risk' ALCRM score at S22, it is clear that the crossing is only high risk due to the collective risk score of '2'. The reason this score is high is because of the high numbers of people using the crossing, demonstrating the value of the crossing to the community. As put to Mr Kenning, it would be bizarre if the high level of use of a level crossing could justify its closure.
- 6.1.7. In terms of any risk saving, the closure of S22 would appear to result in only a 0.1% reduction of national risk, measured through the Fatalities and Weighted Injuries score.⁵⁷¹ In response to this point, Network Rail submitted a note highlighting that S22 still constitutes 71.1% of the FWI saving within the Suffolk Order as a whole.⁵⁷² That may be so, but the fact remains that the crossing's particular FWI saving is insufficient to justify its closure on safety grounds.
- 6.1.8. What is more, in relation to any specific safety risks associated with S22:
- i. its sightlines are well over the required minimum sighting distance in all directions;⁵⁷³
 - ii. the crossing is over one line of rail;
 - iii. the line speed is only up to a maximum of 40mph;
 - iv. the crossing is located 400 metres from Newmarket station;
 - v. there is no rail freight timetabled on this section of the line; and,
 - vi. the surfacing is of a good quality.

⁵⁶⁹ Mr Brunnen agreed with the Inspector when he summarised Network Rail's approach to the selection of crossings in this Order as being based on whether there was an alternative crossing point nearby, irrespective of the ALCRM score, so that the inclusion of crossings was not determined at all by reference to the ALCRM score, albeit that the ALCRM scores are relied on to demonstrate the benefits of the order.

⁵⁷⁰ Mr Prest S22 XX.

⁵⁷¹ Calculated on the basis that S22 FWI score is 0.0128 (Mr Prest's proof at 19.1) and the score for the all level crossings on the Anglia route is 2.95. 2.95 equates to 25% of the overall national level crossing risk (Dr Algaard's proof at 2.3.2).

⁵⁷² NR/INQ/71, para 1.

⁵⁷³ Mr Prest agreed there were "certainly good margins", as can be seen on p. 79 of his proof of evidence. It is understood that this sighting factors in use by vulnerable users (Mr Prest in response to the Inspector's questions).

All of these factors reduce the safety risks associated with the crossing.⁵⁷⁴

Cost associated with S22

- 6.1.9. The second strategic benefit which Network Rail are relying on to justify the closure of S22 is the ability to economise on costs. Yet, Network Rail is unable to give any specific evidence on the costs associated with this level crossing, whether those relate to its maintenance, renewal or the need for its replacement.⁵⁷⁵ It appears to FHDC that the only evidence available on costs is in Dr Algaard's proof which sets out overall estimates of the costs associated with the Order as a whole.⁵⁷⁶ As Ms Noonan highlighted through her evidence, this leaves statutory objectors, such as FHDC, entirely in the dark as to what cost-burden S22 represents both now and in the immediate future.
- 6.1.10. FHDC submits that without any specifics on these associated costs, Network Rail cannot justify closure on the basis of cost savings. It is not disputed that all level crossings incur an ongoing maintenance cost, but it is not possible to balance the factors in favour of keeping the crossing open against the costs associated with it, if specific information on such costs has not been given.

Operational efficiency

- 6.1.11. The final limb of Network Rail's strategic case relates to operational efficiency of Network Rail's network. In particular, Dr Algaard gave general evidence as to the disadvantages, in terms of added costs and delays, which level crossings can bring to any planned enhancement scheme. However, when the specifics of S22 are considered within this context, it is readily apparent that closure of the level crossing cannot be justified on operational efficiency grounds.
- 6.1.12. Mr Kenning agreed that the only enhancement scheme 'in the pipeline' for this stretch of railway was the East-West Rail (EWR) project.⁵⁷⁷ This project is made up of three sections, the: Western; Central; and, Eastern sections. It is the Eastern Section that applies to Weatherby and Mr Kenning had to agree that in relation to this section the timeline is still to be confirmed.⁵⁷⁸ It is accepted that the Eastern section will not be brought forward in advance of the Western and Central sections, which have planned implementation time-lines of 2022-2024 and 'early 2030s' respectively. It is, therefore, expected to be at least 10 years

⁵⁷⁴ Mr Kenning agreed in cross-examination that (ii)-(v) (equating to (a)-(d) in para 11 of Ms Noonan's proof of evidence) would affect the safety risk at S22.

⁵⁷⁵ Mr Kenning agreed during cross-examination that there was no specific evidence on the costs associated with maintaining S22.

⁵⁷⁶ See, for example, Dr Algaard's proof of evidence at 2.2.4, 2.2.6 and 2.2.8.

⁵⁷⁷ Mr Kenning S22 XX. Whilst Mr Kenning also referred to "other improvements" that may be done to improve resilience of the network, no further specifics were given. See also OP/INQ/92.

⁵⁷⁸ Mr Kenning did not dispute the annotated diagram Ms Noonan submitted as part of her updated appendices, marked with the title "East West Rail Route".

before the Eastern section would be progressed. However, Mr Kenning had to accept that there was, in fact, no guarantee that the Eastern Section would ever be developed.⁵⁷⁹ Ultimately, Network Rail cannot show that any enhancement scheme will, in fact, be impacted by S22 and certainly not within any specific timescale. It appears to FHDC there is a real risk that S22 could, on this basis, be closed prematurely and without the expected operational benefits ever being delivered.

6.1.13. Even assuming that an enhancement scheme were to be brought forward, FHDC considers that it would be possible for S22 to be closed at that time through any TWAO or development consent order procedure used to implement the enhancement scheme itself.⁵⁸⁰ Indeed, if Network Rail maintains that the crossing can be closed via diversion,⁵⁸¹ then there would appear to be relatively low costs involved in carrying out the diversion at that point in time. What is more, it appears that S22 is far from the only level crossing along the stretch of railway that would be used to implement the Eastern section of EWR. NR/INQ/52 sets out a table documenting the number of level crossings engaged, along with their current status. In relation to EWR, there are seven level crossings which will require footbridges/bridleway bridges (marked as white) and one crossing which will require a bridge following development work in Phase 1 (dark green).⁵⁸² It seems that any such enhancement scheme would need to address these level crossings in any event. It is unclear what additional time delays closure of S22 would cause.

6.1.14. When these points were put to Mr Kenning in cross-examination, his response was to state that "*its the risk that is driving [the] need to do something here*".⁵⁸³ However, as has been addressed above, the safety risks associated with S22 cannot justify its closure. Nor, it seems to FHDC, can any alleged impact on operational efficiency of the network.

6.2. **SoM4**

Significant loss to the community from closure

6.2.1. FHDC considers that, in contrast to the lack of public benefit associated with closing S22, the loss to the community, from closure, would be immediate and it would be significant.

6.2.2. It will not be disputed that the crossing is well-used and of significant community value as a result.⁵⁸⁴ Nevertheless, FHDC considers that the data relied upon by Network Rail to understand how the public uses the

⁵⁷⁹ Mr Kenning S22 XX.

⁵⁸⁰ Ms Noonan, on behalf of FHDC, referenced enhancements in the Ely area whereby the enhancement project if being moved forward along with measures directed towards a level crossing (Ms Noonan S22 XX).

⁵⁸¹ Notwithstanding the FHDC's position that the diversion proposed by Network Rail for this Order is not acceptable.

⁵⁸² Furthermore, the text directly above this table notes that the EWR route will utilise part of the route for the Strategic Freight Network, namely the sections labelled as "CCH" and "LTN1" which appear to engage further level crossings requiring removal.

⁵⁸³ Mr Kenning S22 XX.

⁵⁸⁴ The numbers of people using the crossing has been documented by the census undertaken by Mott MacDonald set out above.

crossing (and, thereby, to appreciate the impact which closure will have on their day-to-day lives) is fundamentally flawed in several respects, which risks under-recording the expected loss to the community.

- 6.2.3. Firstly, Mott MacDonald failed to carry out origin and destination surveys, notwithstanding that it could have easily done so. The team at Mott MacDonald were, therefore, left to rely on assumptions as to where users were likely going from and to by simply looking at a map and the location of local amenities. Ms Tilbrook agreed that the purpose for which an existing route is being used is relevant when considering if a replacement route is suitable and convenient for existing users.⁵⁸⁵ It is also relevant when considering the value of an existing route to the local community.
- 6.2.4. In response to questioning on this point, Ms Tilbrook noted that such surveys were not felt necessary, in part because the destinations were “obvious” to Mott MacDonald.⁵⁸⁶ It may have appeared obvious, but by failing to properly assess how the crossing is currently being used, there is a real risk that Network Rail have underestimated its value.
- 6.2.5. Secondly, this omission cannot be rectified through any reliance on the two rounds of consultation events held in June and September 2016.⁵⁸⁷ It is notable that Network Rail chose to hold these two events in Bury St Edmunds, as opposed to Newmarket itself. In doing so, Network Rail failed to meet its own target of holding events no further than 10 miles away from the crossings discussed. Mr Kenning accepted Dr Wood’s estimate that the events were, in fact, 15 miles away from S22.⁵⁸⁸ FHDC submits that, had the events been held in Newmarket, the response would have been much higher.⁵⁸⁹
- 6.2.6. Finally, Mr Woodin highlighted that the census was a “blunt tool” and would fail to pick up on any non-visible disabilities, including respiratory conditions and mental health.
- 6.2.7. For these reasons, FHDC submits that only limited weight can be placed on the assessment, by Network Rail, of whether their decision to close S22 sufficiently factored in the community’s interests.
- 6.2.8. Bearing in mind the high level of everyday usage of S22, it is particularly surprising to FHDC that Network Rail is essentially not offering anything new by way of the alternative route provided. The “alternative route” simply “diverts” users to existing highway which users could use today if they wanted to. It is telling that over 400 times a day, users decide not

⁵⁸⁵ Ms Tilbrook XX on strategic matters.

⁵⁸⁶ Ms Tilbrook S22 XX.

⁵⁸⁷ It should be noted that whilst Mr Kenning indicated through XX on S22 that the questionnaires submitted as part of this consultation provided information on users’ origins and destination, Ms Tilbrook confirmed in XX on S27 that these questionnaires did not specifically ask people where they were going to and from.

⁵⁸⁸ Mr Kenning S22 XX by Dr Wood.

⁵⁸⁹ Indeed, as noted by Mr Hodson, the fact that such a small number of consultees responded in relation to the level of use of S22 should have been a warning to Network Rail that their consultation had not been effective.

to use the "alternative route" but to use the crossing instead. It seems that Network Rail is not, in reality, closing the crossing by way of diversion but is instead simply closing the crossing.

6.2.9. In this regard, Network Rail have not demonstrated why other solutions, such as the installation of a bridge, are not appropriate. In his proof of evidence, Mr Kenning asserts that it is not possible to fit a bridge with ramps in the width of Network Rail land.⁵⁹⁰ However, in response to questions put by Dr Wood, he admitted Network Rail had not contacted any adjacent landowners to discuss if a workable solution could be found.

6.2.10. Mr Kenning has also referred to the cost-implications of other mitigation measures.⁵⁹¹ But no specific costs have been cited for mitigation measures at S22. Nor do the cost-benefit analysis figures in Mr Prest's proof⁵⁹² specifically relate to the local circumstances of S22.⁵⁹³ Rather, Mr Prest explained that these are worked out by means of a spreadsheet-based approach which relies on an average cost figure for all level crossings (in relation to a particular mitigation measure). Mr Prest emphasised that this was a "rudimentary" figure that was simply used as a starting point and he was unable to break-down the £50,000 starting figure for closure via diversion.⁵⁹⁴ It seems from Mr Prest's evidence, that this figure may then be added to what appeared to be a similarly rudimentary assessment of additional costs associated with a level crossing.⁵⁹⁵ As a result, FHDC considers that limited weight, if any, can be placed on these figures. Indeed, it is unclear why, in fact, they have been provided as evidence at this Inquiry.

Undue reliance on the alleged status of rights of way at S22

6.2.11. When Mr Kenning's evidence is scrutinised, it becomes apparent that Network Rail's decision to close S22, without the provision of any replacement infrastructure, such as a bridge, was not due to any land constraints, or an assessment of costs but, in reality, turned on Network Rail's view that there are no public rights of way at the crossing.

6.2.12. During cross-examination by Mr Hodson on strategic matters, Mr Kenning, in reference to S22, stated that "*...the bottom line is that nobody has proved there is a public right of way at the crossing...if there was a public right of way demonstrated then we would be in a very different situation regarding what we were offering*". This led to the Inspector asking what Mr Kenning had in mind, in terms of what

⁵⁹⁰ At para 19.4.2.

⁵⁹¹ Mr Kenning's proof at para 19.5 and rebuttal at para 3.

⁵⁹² At para 19.15.

⁵⁹³ Mr Prest XX on strategic matters.

⁵⁹⁴ Mr Prest XX on strategic matters.

⁵⁹⁵ Mr Prest used an example where an extra £20k may be added to represent the need for a works to an underbridge. FHDC would highlight that para 2 of Network Rail's "response to questions asked of Mr Prest in respect of S27 and S69" (handed into the Inquiry on 23 May 2018) provides a good example of the rudimentary nature of this assessment.

Network Rail might have offered, and whether there was any principle in his mind in terms of his answer to Mr Hodson. Mr Kenning answered:

"yes – when we did the initial assessment of the entire route – the status of the crossing was taken into consideration – we know the status of the level crossing – we know that if there had been a public right – with the numbers that are using it then clearly a diversion would not be suitable for a public right – that there would clearly need to be something provided other than a diversion – at that point it is down to the status of the path."

- 6.2.13. The Inspector asked if Mr Kenning meant that Network Rail would be offering a bridge or an underpass and Mr Kenning replied *"if we were looking for closure then...yes"*.
- 6.2.14. The relevance of the alleged status of rights at S22 is also clear from Mr Kenning's rebuttal in which he responds to SCC's query as to why further mitigation measures cannot be provided. Mr Kenning sets out that Network Rail *"does not believe"* there to be any public rights at the level crossing, going on to cite a number of facts on which Network Rail relies to support its position in this regard and relying on a legal principle alleged to arise from *Ramblers' Association v The Secretary of State for Environment, Food and Rural Affairs, Network Rail & Others* [2017] EWHC 716 (Admin).⁵⁹⁶
- 6.2.15. SCC considered it necessary to make legal submissions in response to this reference (OP/INQ/20), making clear that it would not be putting forward evidence in relation to the status of the rights of way at S22, nor did it consider that this Inquiry was the appropriate forum for the matter to be determined.
- 6.2.16. After further debate between the parties on whether the issue could be decided through this Inquiry,⁵⁹⁷ the Inspector made a ruling on 27 April 2018 that he would not draw a conclusion on the matter of whether public rights of way do or do not exist over S22. FHDC welcomes the Inspector's ruling and is grateful for his having provided clarity on the issue. As a result, the question of whether there is a public right of way at S22 will be left undetermined.
- 6.2.17. Following on from this, Mr Kenning began his evidence on S22 by stating that the statement he had previously made in answer to the Inspector's questions during his strategic evidence (quoted above) was incorrect, clarifying that whilst he had said things would have been done differently if there had been a right of way at the crossing, in retrospect he did not think it would have made a difference.⁵⁹⁸
- 6.2.18. FHDC submits that greater weight must be placed on Mr Kenning's initial answer. It was his first response to the point, it accords with his

⁵⁹⁶ Mr Kenning's rebuttal on S22 at para 2. The case is located in the legal bundle, tab 14.

⁵⁹⁷ Including supplementary submissions by SCC (OP/INQ/33) and submissions made orally on behalf of SCC on Day 13 of the Inquiry.

⁵⁹⁸ Mr Kenning S22 XIC.

rebuttal evidence and there is no reason why his thinking should have been any different due to the fact he was giving evidence on strategic matters.

- 6.2.19. What is more, during cross-examination of Mr Kenning in relation to S22, it was clear that the alleged status of rights at S22 did play a role in how Network Rail determined to close the crossing.⁵⁹⁹ In response to questioning on how Network Rail considered the level of opposition to closure, including a consultation response showing 97% against closure at round 1, Mr Kenning answered "*it comes down to the legal point*" that there is no public right of way at the crossing. A similar response was given when Councillor Hulbert asked if Mr Kenning had ever thought of the human issue that will be done to the people of Newmarket.
- 6.2.20. FHDC is unclear as to how, exactly, the undetermined legal status of rights at S22 factored into the '*balancing exercise*' in determining whether to close the crossing without the provision of replacement infrastructure. But it is clear that it did.
- 6.2.21. Such an approach is flawed for two reasons:
- i. Firstly, the status of rights has not yet been determined and Network Rail's contention, that there are no public rights of way, may turn out to be wrong; and,
 - ii. Secondly, regardless of the formal status of rights at the crossing, Mr Kenning agreed that the crossing has been maintained as if it were a public right of way. There are no signs saying that access is by permission only and the public enjoys access through it in the same way as any level crossing over which there are recorded public rights of way. Put simply, the practical impacts of closure on the wider community is unaffected by the legal status of rights.

Conclusions

- 6.2.22. FHDC considers, in light of these submissions, it is clear that Network Rail has failed to justify the need to close S22 or why no replacement infrastructure can be provided.

6.3. ***The diversion***

- 6.3.1. Without prejudice to the above submissions, FHDC does not consider that a suitable and convenient replacement route for existing users is being offered by Network Rail at S22⁶⁰⁰. In relation to this point, FHDC refers to, and adopts, the closing submissions made by SCC. It further echoes SCC's concerns relating to the DIA process⁶⁰¹.

Unknown impacts on air quality

⁵⁹⁹ Mr Kenning agreed that the status of rights of way "played a part" in the decision to close S22.

⁶⁰⁰ Paras 5.4.5.5-15 above.

⁶⁰¹ Paras 5.4.5.16-23 above.

- 6.3.2. In addition to the submissions made by SCC on issues associated with an expected increase in car journeys, FHDC has also raised a concern relating to air quality.
- 6.3.3. Through Ms Noonan’s proof of evidence, FHDC highlighted the particular problems which Newmarket has had with air quality and sought clarification on how Network Rail had considered the potential impacts of increased car use caused by closure of S22. An *Air Quality Management Area (AQMA)*, situated on Old Station Road, has been in place since 6 April 2009, having been amended on 18 April 2017 to remove the High Street from its scope. It is hoped that the AQMA can be completely revoked in 2019, a welcome indicator that the situation has greatly improved in recent years.
- 6.3.4. Notwithstanding recent improvements, the AQMA remains in place at present and acts as a clear warning sign to any proposed development which may result in increases in car usage in its vicinity. Ms Tilbrook failed to mention the AQMA in her proof of evidence and the EIA Screening Report⁶⁰² refers to there being “*no nearby*⁶⁰³ *designated air quality management areas*”,⁶⁰⁴ concluding that “[o]perationally, the proposals do not result in changes to local traffic flows, therefore it is anticipated that there will be no significant effects on air quality”.⁶⁰⁵ In her rebuttal on this point, Ms Tilbrook simply states that she does not consider closure of the crossing to result in a move away from walking and cycling to car use “*at the scale suggested*” by objectors, referring to her evidence on usage and diversion distances.⁶⁰⁶
- 6.3.5. Network Rail’s assessment of the potential impacts on air quality that may be caused by the closure of such a well-used pedestrian access point located in the heart of Newmarket is cursory at best, appearing to rely on a ‘gut-feel’ that users will not choose to drive to any problematic degree. It is clear from national planning guidance⁶⁰⁷ that the potential impacts of any development on air quality need to be carefully considered. Ms Tilbrook’s evidence has failed to allay Ms Noonan’s concerns that Network Rail has done so. It is the applicant’s burden to carry out a proper assessment; the burden should not lie with objectors to incur the cost of their own traffic modelling assessments to prove the applicant has got it wrong or, indeed, to find out what the likely effects would be.

6.4. **Conclusions**

⁶⁰² NR/INQ/37.

⁶⁰³ Ms Tilbrook was unable to comment on how “nearby” was defined in this context.

⁶⁰⁴ NR/INQ/37 p. 142.

⁶⁰⁵ NR/INQ/37 p. 143. It is worth noting that FHDC does not dispute the conclusion reached in this report that there would be no “likely significant effects” on air quality, but that this does not allay FHDC’s concerns as to how, if at all, the potential impacts on air quality in Newmarket were considered further by Mott MacDonald and Network Rail when considering whether or not to pursue closure of the crossing.

⁶⁰⁶ Ms Tilbrook’s rebuttal on S22 at para 2.4.5.

⁶⁰⁷ See, for example, NPPG (on air quality) para 5: “Whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor.” (Emphasis added.)

- 6.4.1. On the basis of these submissions, FHDC considers that by failing to properly balance Network Rail's interests against the interests of other stakeholders, Network Rail has failed to justify the need to close S22. Nor has Network Rail justified why any closure of S22 should be via diversion as opposed to the provision of other mitigation measures. Network Rail is presenting its proposal for S22 on grounds that it has come to a balanced decision that factors in the wider community interest. FHDC submits that this has not been done and on this basis requests that the Inspector recommend removal of the proposal to close S22 from the Order.

7. OBJ/28 - THE CASE FOR ST EDMUNDSBURY BOROUGH COUNCIL⁶⁰⁸ (SEBC)

7.1. Introduction

- 7.1.1. St Edmundsbury Borough Council (SEBC) is the local planning authority for the area in which S25-Cattishall is situated and is a statutory objector⁶⁰⁹ to the proposal to close this crossing.
- 7.1.2. SEBC objects to Network Rail's proposal to close S25, on the basis that it does not comply with local planning policy and the alternative route is not a suitable and convenient replacement for existing users of the crossing.
- 7.1.3. There is a clear overlap in the objections of SEBC and SCC in relation to S25. For ease of reference, and to avoid unnecessary duplication, these closing submissions will, therefore, cross-refer to submissions made on behalf of SCC, making clear any points that are adopted by SEBC.

7.2. SoM3 – Policy

- 7.2.1. SEBC considers that S25 Cattishall is located within a unique local planning context. It sits, geographically, at the heart of a planned strategic extension area to the north-east of Bury St Edmunds, through which the local planning authority is seeking to deliver considerable levels of housing and future plan-led development. The railway line acts as a physical barrier through this planned area of growth, which is why SEBC has been working so hard, through its planning system (both at a plan-making and decision-taking level) to ensure that there will be sufficient connection points across the railway. Its aim is to accommodate integrated and sustainable communities in Bury St Edmunds, both now and into the future. S25's location makes it a key connection point in this regard and Network Rail's proposals, in seeking to close S25 through this Order, would, thereby, undermine and conflict with this long-term local planning objective.

⁶⁰⁸ OP/INQ/111.

⁶⁰⁹ As defined by rule 2(1) of the Transport and Works (Inquiries Procedure) Rules 2004 and section 11(4) of the Transport and Works Act 1992.

7.2.2. **Relevant Local Plan Policies – Strategic Growth Area**

Core Strategy 2010

- 7.2.2.1. Through his evidence at the Inquiry, Mr White, Principal Planning Officer for West Suffolk Councils,⁶¹⁰ set out the local planning context in more detail. He explained both in oral evidence, and by way of a briefing note (OP/INQ/79) that the St Edmundsbury Local Plan is made up of four documents: the *Core Strategy*⁶¹¹ (adopted in December 2010); the *Bury St Edmunds Vision 2031 Document*⁶¹² (adopted in September 2014); the *St Edmundsbury and Forest Heath Development Management Policies Document*⁶¹³ (adopted February 2015); and, the *St Edmundsbury Policies Map Book* (Adopted February 2015).⁶¹⁴
- 7.2.2.2. As explained by Mr White, the Core Strategy is a high-level document which sets out the overall amount of housing growth in the borough and the strategic directions of growth around Bury St Edmunds. Five directions of growth were specified for Bury St Edmunds and Core Strategy Policy CS11 sets out high level policy relating to each of these areas. Mr White recognised that the Core Strategy did not, itself, define the exact parameters of the strategic sites that related to each of these directions of growth, but he confirmed that the relevant location of these sites was known at the time the Core Strategy was drafted.⁶¹⁵ Two of these sites are relevant to S25: (i) the North-East Bury St Edmunds site and (ii) the Moreton Hall Bury St Edmunds site.
- 7.2.2.3. In relation to Policy CS11, Mr White's evidence was clear that Policy CS11(ii) applies to the Moreton Hall site and Policy CS11(iv) applies to the North-East site. When challenged, through cross-examination, that the sub-policies in Policy CS11 were not site-specific, when read alongside para 5.12 of the explanatory text, Mr White's response was clear: these were broad directions of growth that related to specific allocations⁶¹⁶ ("*put it this way, when Taylor Wimpey submitted its application [for the Moreton Hall site] CS11 was key to considering it*"⁶¹⁷).
- 7.2.2.4. Mr White highlighted the following policy requirements in Policy CS11(ii):
- i. *2011 onwards – Limited growth completing the existing Moreton Hall urban extension by:*
 - *Providing improved public transport, foot and cycle links to the town centre and other locally significant leisure, employment and service destinations;*

⁶¹⁰ West Suffolk Councils includes both FHDC and SEBC.

⁶¹¹ OBJ/29/C10 (in full) with relevant extracts included in Appendix 2 to Mr White's proof of evidence.

⁶¹² OBJ/29/C3.

⁶¹³ Relevant extracts included in Appendix 3 to Mr White's proof of evidence.

⁶¹⁴ See OBJ-29-C2 and OP/INQ/76.

⁶¹⁵ OP/INQ/79.

⁶¹⁶ Mr White S25 XX.

⁶¹⁷ Mr White S25 XX.

- *Enabling potential transport links to the north of the railway line;*

7.2.2.5. This requires any development of the Moreton Hall site to ensure linkages to the north of the railway line. Bearing in mind that S25 is situated on the northern boundary of the site and is the only crossing point open for use in the vicinity, Mr White's view was that *"if we had brought forward a proposal that didn't link into the crossing I would have said that was contrary to the policy."*⁶¹⁸

7.2.2.6. As regards Policy CS11(iv), Mr White highlighted:

iv. *'Long term strategic growth – north-east Bury St Edmunds that:*

- *Provides improved public transport, foot and cycle links to the town centre and south towards the A14 and strategic employment sites'*

7.2.2.7. Mr White explained in his proof of evidence that the purpose of this bullet point is to avoid isolation of the North-East allocation by ensuring appropriate linkages to the site.⁶¹⁹ Mr White highlighted the word 'improved' and the fact that the plural word 'links' was used. Whilst SEBC accepts the underpass (by which Network Rail is seeking to divert users of S25 through this proposal) is located on the southern side of the North-East site and, if re-opened, would act as one link to this site, this planning policy did not envision reliance on there only being a connection through the underpass.

Joint Development Management Policies Document: Concept Statements

7.2.2.8. Policy DM3 of the *Joint Development Management Policies Document* requires Masterplans for development proposals on the Moreton Hall and North-East sites which should be in accordance with any concept statements approved by the Local Planning Authority. Mr White explained that the Concept Statement provides high-level requirements with the Masterplan providing the 'flesh on the bone'.⁶²⁰

7.2.2.9. It is notable that the North-East site's Concept Statement⁶²¹ states at 1.15 that:

'The site is separated from the existing urban edge of Bury St Edmunds by the railway line which provides a physical barrier. This could present difficulties in achieving integration of the new development with the existing, with opportunities for footpath and cycle connection limited. The existing level crossing point at Cattishall and footpath tunnel should be utilised.'

⁶¹⁸ Mr White S25, response to the Inspector's questions.

⁶¹⁹ Mr White's proof of evidence at para 13.

⁶²⁰ Mr White S25 XIC.

⁶²¹ Located in Appendix 9 to the Bury St Edmunds Vision 2031 (OBJ/29/C3) with relevant extracts provided in Appendix 4 to Mr White's proof of evidence.

7.2.2.10. For the Moreton Hall site, the Concept Statement⁶²² states at 1.30:

'Opportunities to reduce short trips by car will be an important factor in measuring the environmental sustainability of the development. Movement through the site will be facilitated by a network of footpaths and cycleways, which will connect with the existing system which provides access to the town centre. Links should also be made to development proposed to the north of the railway line...'

7.2.2.11. SEBC submits that these two provisions clearly point to a reliance on the S25 crossing providing a point of access. In particular, para 1.15 above specifically refers to both S25 and the underpass being used in tandem.

Masterplans

7.2.2.12. Masterplans have now been adopted for both of the sites in question which, as Mr White explained, followed on from a consultation process between the developers and the local planning authority and a formal adoption of the plan by full council.⁶²³ Mr White gave evidence at the Inquiry and in his proof of evidence documenting how these two masterplans clearly envisage maintained linkages to S25.⁶²⁴

7.2.2.13. Mr White further highlighted that, in relation to the Masterplan for the Moreton Hall site, there had been great effort⁶²⁵ to plan for a linear park leading up to S25, that would act as an attractive and car-free route to and from the crossing. Mr White recognised that in the plan, included as Figure 9 in his proof, the paths leading up to S25 appear to veer off to the left.⁶²⁶ Mr White explained that this plan was prepared with a view to enabling both the current use of S25 in the short-term and the installation of a bridge at a later point in time (once the North-East site is brought forward). The paths are designed to lead up to the future position of the bridge and this makes sense where the "*end game is a bridge*".⁶²⁷ Mr White also highlighted that S25 fell outside the plan's red line which may have explained why the section beyond the red line has been shaded in green.

7.2.2.14. It is clear, however, that Mr White is correct as to how the linear park connection to S25 is designed to work prior to a bridge being constructed. When the question was put to Mr White in re-examination whether he had expected, at the time the plan shown in Figure 9 of Mr White's proof was agreed to, that there could be a scenario where

⁶²² Located in Appendix 7 to the Bury St Edmunds Vision 2031 (OBJ/29/C3) with relevant extracts provided in Appendix 6 to Mr White's proof of evidence.

⁶²³ Mr White in response the questions by the Inspector.

⁶²⁴ See, for example, the proposed pedestrian/cycle links shown in Figure 5 of Mr White's proof and Figure 7.

⁶²⁵ "It was a collaborative work with the local planning authority – to make the linear park as attractive and welcoming to pedestrians and cyclists – you'll see there is a grey road crossing the green lane – we spent many many hours regarding how that might work – from a highway perspective – in terms of slowing traffic down but enabling traffic to use it." Mr White in response to questions by the Inspector.

⁶²⁶ Mr White in response to questions by the Inspector.

⁶²⁷ Mr White in response to questions by the Inspector.

there was no crossing point, Mr White replied, "absolutely not" noting that it was always considered that the link to the north would be there when working up the Taylor Wimpey development.⁶²⁸

- 7.2.2.15. Furthermore, this position is supported by the response of SCC to a recent request for a Stopping-up Order under section 247 of the *Town and Country Planning Act 1990*. The request seeks to stop up the existing highway and replace it with a bridleway.⁶²⁹ SCC has raised a concern with the Department for Transport in relation to this draft order that the proposed bridleway needs to connect up to the level crossing (where, at present it is shown as only leading up to the point of access for a future bridge).⁶³⁰

Current development status

- 7.2.2.16. At present, the Moreton Hall allocation has been granted outline consent, with phases 1 and 2 having received full detailed consent. The development is currently under construction with some parts having already been completed. As has been noted, a Masterplan has been agreed for the North-East Site and a hybrid planning application is expected in the very near future.

Replacement bridge

- 7.2.2.17. Mr White has highlighted that, from the Local Planning Authority's perspective, one of the main points of frustration, and confusion, arising out of Network Rail's proposals is the fact that it appears to fly in the face of concurrent ongoing discussions with the proposed developer of the North-East site to provide a bridge over S25 as part of the development. SEBC is aware that legal agreements have been drafted and agreed but not yet completed that would require the developer to pay Network Rail to install a bridge within 12 months of a grant of planning consent. Network Rail's proposal to close the crossing now, through this Transport and Works Act Order, raises serious concerns, on the part of the Local Planning Authority, about the uncertainties that closure would bring in relation to the agreement to build a bridge.
- 7.2.2.18. There would appear to be an obvious 'buy-in' for Network Rail to enter such an agreement if the crossing remains open. Indeed, a bridge would remove any additional safety risks at the level crossing associated with the proposed development of the North-East site and any ongoing maintenance costs associated with the level crossing. It is distinctly unclear whether Network Rail's position would be the same if the crossing were to be removed through this Order.
- 7.2.2.19. When the concern was put to Mr Kenning, that Network Rail may no longer agree to construct a bridge if S25 were closed, Mr Kenning

⁶²⁸ Mr White S25 RIX.

⁶²⁹ OP/INQ/82.

⁶³⁰ OP/INQ/82.

responded that he “didn’t know why we wouldn’t continue”.⁶³¹ But he could not make any formal commitment,⁶³² which is understandable as it would appear to fall outside the scope of Mr Kenning’s expertise. However, having “*listened very carefully*”⁶³³ to Mr Kenning’s responses, Mr White noted that Mr Kenning did not say that “*without question*” Network Rail would bring the agreement forward, rather he said “*there was no reason that Network Rail wouldn’t want to*”.⁶³⁴ That cannot allay the Local Planning Authority’s concerns as to the future deliverability of such an important piece of infrastructure.

Consultation with Network Rail

- 7.2.2.20. SEBC maintains that Network Rail were consulted on the *Core Strategy and Joint Development Management Policies Document* and that if they had any concerns over the position at S25, they should have raised these at that time. Furthermore, Network Rail have now accepted that they were also consulted on the Moreton Hall development and did not object.⁶³⁵

Conclusion on conflict with planning for the strategic growth area

- 7.2.2.21. In light of the above, SEBC considers that Network Rail’s proposal to close S25 clearly conflicts with a carefully designed local planning framework seeking to plan strategically for growth in Bury St Edmunds.
- 7.2.2.22. Mr White gave detailed evidence about the specifics of the planning context. He did so, not only as a planner, but as somebody who is uniquely placed to understand the basis for both the plan-making and decision-taking in relation to the sites in issue. As Mr White explained, he was in a privileged position having worked on the local plan team involved in delivering the *Bury St Edmunds Vision 2031 Document* and, subsequently, on the implementation side, overseeing the adoption of the Masterplans and strategic development sites on the eastern side of Bury St Edmunds. In light of this, SEBC submits that significant weight can be placed on his evidence.

7.2.3. ***Further relevant planning policies***

- 7.2.3.1. SEBC considers the proposal to close S25 conflicts with further planning policy at both a national and local level. Mr White explained that he considered there to be a conflict with paras 34, 37 and 61 of the Framework, 2012,⁶³⁶ due to the additional length of the alternative route

⁶³¹ Mr Kenning S25 XX.

⁶³² For example, Mr Kenning could not say for certain that Network Rail would give the air rights if the crossing was closed S25 XX by the Ramblers’ Association.

⁶³³ Mr White S25 XIC.

⁶³⁴ Mr White S25 XIC, further noting in response to Network Rail’s point that nothing they are proposing will preclude the provision of a link via a footbridge, “it feels as if you’re asking the Local Planning Authority to trust you but yet nothing has been put in front of us to say we will definitely work on the basis that it is open even if it is closed.”

⁶³⁵ OP/INQ/69.

⁶³⁶ Appendix 1 to Mr White’s proof of evidence.

for users of the crossing and having regard to the thrust and spirit of what the Framework is seeking to do in these paragraphs.⁶³⁷

- 7.2.3.2. Furthermore, Mr White has highlighted conflicts with *Core Strategy* Policy CS8 and *Joint Development Management Policies* DM2 and DM44 as Network Rail's proposal will result in a significantly longer route that will, in practice, reduce access to the countryside and worsen sustainable transport links.
- 7.2.3.3. SEBC notes para 1.28 of the Department for Transport's guidance on the Transport and Works Act 1992, *A Guide to TWA Procedures (2006)* which states:
- '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.'*
- 7.2.3.4. Furthermore, the Secretary of State has asked to be informed on the extent to which the proposals in the Order are consistent with the Framework, national transport policies and local transport, environmental and planning policies.⁶³⁸ Whilst SEBC recognises that planning permission is sought (through Network Rail's request for deemed planning permission) for specific works required in relation to the Order, it submits that it is clear from the TWA Guidance and the Statement of Matters that the Secretary of State will need to consider the extent to which the substance of what is being proposed at S25 is consistent with relevant planning policies.⁶³⁹
- 7.2.4. SEBC considers that, for the reasons given above, there are a number of planning policy conflicts associated with closure of S25 and, on this basis, requests that the Inspector recommends removal of this proposal from the Order.
- 7.3. **SoM4 - The diversion**

⁶³⁷ Mr White S25 XX.

⁶³⁸ Statement of Matters para 3.

⁶³⁹ SEBC has made joint submissions with SCC concerning Network Rail's request for deemed planning permission (OP/INQ/60). These submissions should be read alongside these closing submissions and are not unduly repeated here.

- 7.3.1. SEBC further considers that the alternative route is not a suitable and convenient replacement for existing users. It refers to, and adopts, the closing submissions made by SCC in this regard⁶⁴⁰.

8. OBJ/36 - THE CASE FOR THE RAMBLERS' ASSOCIATION⁶⁴¹

8.1. *Introduction*

- 8.1.1. The Ramblers' Association relies on the key points of objection to the Order set out in its Opening Statement, its legal submissions, and on other submissions made in writing during the Inquiry.
- 8.1.2. The Ramblers' Association objects to the proposed Order, both on grounds that Network Rail's strategic case for the Order is flawed and on grounds that, even if its strategic case were found not to be flawed, Network Rail has failed to appropriately implement it when preparing the Order. Furthermore, the Ramblers' Association has, without prejudice to its concerns as to strategic matters, considered each individual crossing and the proposed alternative routes suggested by Network Rail. The Ramblers' Association has taken a reasonable approach to assessing each closure and have only objected to those crossings where they feel the proposed alternative is unsuitable or inconvenient. Having now heard the relevant crossing-by-crossing evidence, the Ramblers' Association maintains objections to 10 of the crossings (see below).

8.2. *Whether it is appropriate to use the TWA procedure⁶⁴²*

Introduction

- 8.2.1. The Ramblers' Association set out, in its Statement of Case, its view that it is inappropriate to use a TWA Order to pursue the level crossing closures and diverted routes (the Proposed Scheme) envisioned in the draft Order. The Ramblers' Association drew attention to the existence of sections 118A and 119A of the *Highways Act 1980* (HA 1980), which are specifically designed to enable railway operators to stop-up and divert footpaths, bridleways and restricted byways that cross railways, and which, in the Ramblers' Association's view, are the correct statutory provisions to be applied by Network Rail to carry out the level crossing closures under the Order.
- 8.2.2. These submissions address in more detail the points made by the Ramblers' Association in its Statement of Case. They are designed to assist the Inspector, Network Rail and any other interested party to the Inquiry, in understanding the scope of the Ramblers' Association's position and the overarching concerns that the Ramblers' Association has relating to the Order and Inquiry Procedure.

Inappropriate use of the Transport and Works Act 1992

⁶⁴⁰ See SoM4(f) and SoM5 regarding S25.

⁶⁴¹ OP/INQ/89.

⁶⁴² OP/INQ/06.

- 8.2.3. The Transport and Works Act 1992 (TWA) was enacted to enable infrastructure-related projects to be processed by way of a statutory order. Previously, such schemes were authorised by the more cumbersome and time-consuming process of promoting a Private Bill in Parliament. The TWA was intended to speed up and simplify the process, as well as enable a more localised consideration of infrastructure projects that were not of national significance.⁶⁴³
- 8.2.4. The TWA is designed to offer a 'one-stop shop' approach to infrastructure-related projects, by providing for a number of subsidiary, but necessary, powers to be available for inclusion in a TWA Order, thereby 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.
- 8.2.5. Section 1 of the TWA states, in the relevant part:
- 1. Orders as to railways tramways etc.*
- 1.1 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*
- 1.1.1 A railway;...*
- 8.2.6. Furthermore, section 5(6) of the TWA provides:
- 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.*
- 8.2.7. The Ramblers' Association considers that it is notable, however, that the TWA did not simply establish a new system for creating statutory instruments to enable infrastructure works. Part II of the TWA created an updated statutory framework for ensuring the 'safety of railways', which, by way of section 47 and schedule 2, introduced two new provisions to be inserted into the HA 1980: sections 118A and 119A.
- 8.2.8. In short, these provisions allow for orders to be made for the stopping up (section 118A) and diversion (section 119A) of footpaths, bridleways and restricted byways⁶⁴⁴ crossing railways. In order to confirm these

⁶⁴³ Part of the initial inspiration for the TWA can be found in a Joint Select Committee report, *Report of the Joint Committee on Private Bill Procedure*, Session 1987-88; HL Paper 97, which highlighted delays experienced in the enactment of Private Bill and other concerns arising from the ongoing reliance on the centralised Parliamentary system.

⁶⁴⁴ In relation to restricted byways, see Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, sch.1(1), para 1.

orders, the confirming authority (whether the Secretary of State or the council) 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.'

8.2.9. Whilst enacted by the TWA, the Ramblers' Association considers that it is notable that sections 118A and 119A were inserted into Part VIII of the HA 1980, which has been referred to as part of a 'carefully structured scheme for the creation, extinguishment and diversion of footpaths'.⁶⁴⁵ These sections have their own specific procedure for applications, consultation etc,⁶⁴⁶ and they contain particular provisions that, for example, restrict what alterations can be made to a point of termination of a path or way following a diversion order (section 119A(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 (sections 118A(5) and 119A(8)(b)). Certain organisations have also been expressly specified as bodies that are required to be notified at various stages of the order-making/confirming process pursuant to sections 118A and 119A.⁶⁴⁷ These organisations include the Ramblers' Association.⁶⁴⁸

8.2.10. In addition, section 48 of the TWA was designed to complement section 47 (and sections 118A and 119A). Section 48 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.

(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.'

⁶⁴⁵ *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]. This point was not disputed by the other justices.

⁶⁴⁶ See The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 and HA 1980, sch 6.

⁶⁴⁷ The Rail Crossing Extinguishment and Diversion Orders Regulations 1993, reg 4(3) and sch 4.

⁶⁴⁸ The Rail Crossing Extinguishment and Diversion Orders Regulations 1993, sch 4.

- 8.2.11. The Ramblers' Association says it is evident that Part II of TWA was carefully designed for the exact same purpose which underlies the Proposed Scheme that Network Rail is currently pursuing by way of the Order. Parliament was well 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. In fact, British Rail had already attempted to promote the *East Coast Main Line (Safety) Bill* in November 1990, in order to affect the closure of ten level-crossings over the East Coast Main Line. That Bill was blocked by MPs in Parliament, and it seems that the legislative scheme established by the TWA was intended to accommodate British Rail's objectives.⁶⁴⁹
- 8.2.12. Within this context, it is clear that Parliament intended for sections 118A, 119A of the HA 1980 and section 48 of the TWA to be used by railway operators intending to close level crossings. It is worth quoting in full, the Minister's remarks during the second reading in the House of Commons of what became section 48 of the TWA:

'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

⁶⁴⁹ See, for example, the response of the Minister, Mr McLoughlin, to a query raised by the hon. Member for Denton and Reddish (Mr Bennett) about whether British Rail would continue to pursue the East Coast Main Line legislation following the enactment of the TWA, "It is for British Rail to decide how it wishes to proceed with that legislation. It will want to take into account what happens with this Bill if it reaches the statute book."

*administrative arrangements to ensure that each is aware of the diversion and extinguishment applications.*⁶⁵⁰

- 8.2.13. The Ramblers' Association considers it is evident from the above quote that the intention behind the TWA was to create a specific statutory scheme to address British Rail's proposed closures of level crossings on safety grounds. The railway operator should seek a stopping up or diversion order under sections 118A or 119A of the HA 1980; alternatively, the Secretary of State was given powers to require a bridge or tunnel to be constructed under section 48 of the TWA.
- Network Rail's Proposed Scheme – frustration of statutory scheme*
- 8.2.14. The sole purpose of the Order is to close level crossings. Whilst Network Rail claim that they are seeking to close the crossings for *inter alia* reasons of improving operational efficiency, the Ramblers' Association says it is clear from Network Rail's statement of case that the key justification for the crossing closures is its concerns about safety.
- 8.2.15. Whilst there have previously been TWA Orders confirmed that seek solely to close one or two level crossings and/or divert public rights of way, the scale of this Order, in seeking to close 60 crossings across a whole county, is wholly unprecedented.⁶⁵¹
- 8.2.16. The Ramblers' Association considers that by seeking a TWA Order, Network Rail are attempting to bypass the specific statutory scheme that was designed (by the TWA itself) to accommodate such closures of level crossings. The Ramblers' Association accepts that there are a number of different means by which to close or divert public rights of way,⁶⁵² and that the existence of one such power does not, necessarily, prevent the use of another.⁶⁵³ However, having particular regard to the statutory intention behind the TWA as outlined above, it is clear that Network Rail's proposed use of the TWA for the Proposed Scheme would frustrate the statutory purpose of sections 118A and 119A of the HA 1980.⁶⁵⁴
- 8.2.17. Network Rail has, however, sought to defend its use of the TWA for the Proposed Scheme on a number of grounds, none of which have merit in the view of the Ramblers' Association. Firstly, Network Rail have argued that sections 118A and 119A are solely concerned with safety issues at level crossings, whereas the proposed Order is for purposes of operational efficiency (relating to Network Rail's plans to, for example, speed up the network) in addition to safety concerns. Network Rail

⁶⁵⁰ *Hansard*, HC, Vol 204, col 485.

⁶⁵¹ Furthermore, the fact that other TWAOs have previously been confirmed (and the time limit for reviewing those TWAOs has passed) does not act as a bar to establishing the inappropriateness of the use of the TWA for such schemes.

⁶⁵² For example, see ss247 and 257 Town and Country Planning Act 1990; sch 10 Housing Act 1988; s48 Civil Aviation Act 1982.

⁶⁵³ See, for example, the saving and interpretation provision, s123 HA 1980.

⁶⁵⁴ *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12 at [199] per Baroness Hale, "the long-established principle of United Kingdom public law that statutory powers must be used for the purpose for which they were conferred and not for some other purpose: *Padfield v Minister of Agriculture Fisheries & Food* [1968] AC 997."

asserts that only a TWAO can address issues in addition to safety concerns.

- 8.2.18. However, sections 118A and 119A allow for other issues to be considered under the broader 'expediency' test (at the stage of confirming the order).⁶⁵⁵ Furthermore, it is clear to the Ramblers' Association that safety concerns are, in reality, the driving concern behind Network Rail's Proposed Scheme. If, in relation to the Proposed Scheme, Network Rail were to be allowed to bypass the sections 118A and 119A procedure simply by pointing to the further operational benefits to be gained from closing the crossings, then there is a risk that sections 118A and 119A will, in future, become defunct. A railway operator would simply need to assert that closing a crossing will also assist in improving operational management of the network, in order to proceed under a TWA Order and avoid meeting the tests set out in sections 118A and/or 119A. Most notably, it would then, as a result, 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.
- 8.2.19. Secondly, Network Rail have argued that a TWA Order allows a more comprehensive approach to crossing closures, allowing multiple closures to be achieved through one order. This may well be true, but such an efficiency-based argument does not make the process lawful in the view of the Ramblers' Association.
- 8.2.20. In addition, Network Rail note (at para 115 of Network Rail's Statement of Case, NR26) that the Order includes a number of matters that fall within the ambit of a TWA Order and, furthermore, that a TWA Order will afford Network Rail a number of ancillary powers, such as CPO powers, to enable the closure of level crossings.⁶⁵⁶ Again, the fact that the process would be easier for Network Rail does not, in itself, make the process lawful. Furthermore, whilst Network Rail may be requesting a number of ancillary powers in the Order to carry out the Proposed Scheme, this should not detract from the fact that the whole Order is directed towards the closure of level crossings which falls within the ambit of sections 118A and 119A of the HA 1980. The Ramblers' Association considers that, for the reasons given above, where the focus

⁶⁵⁵ Sections 118 and 119 of the HA 1980 are also available to stop-up or divert public rights of way on grounds other than safety. A s118 stopping-up order can be made where it appears to a council that a footpath, bridleway or restricted byway is not needed for public use; the order may be confirmed if the confirming authority is satisfied that it is expedient to do so having regard to the extent (if any) to which the path or way is likely to be used by the public. A s119 diversion order can be made if expedient to do so (in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public); the order may be confirmed if the confirming authority is satisfied *inter alia* that it is expedient to do so and that the diverted route will not be substantially less convenient to the public. The confirming authority will also need to be satisfied that it is expedient to confirm the order having regard to the effect to which (a) the diversion would have on public enjoyment of the path/way as a whole, (b) the coming into operation of the order would have as respects other land served by the existing PRow and (c) any new PRow created by the order would have as respects the land over which the right is so created and any land held with it.

⁶⁵⁶ As an aside, it is noted that s119A of the HA does make provision for the payment of compensation. See s119A(8)(a).

of an order is the closure of such level crossings, it should be sought under sections 118A and 119A of the HA 1980.

8.2.21. The Ramblers' Association notes the argument raised by Network Rail (para 115 of Network Rail's Statement of Case) that sections 118A and 119A of the HA 1980 only apply to footpaths, bridleways and restricted byways. However, sections 116 and 117 of the HA 1980 are available for the stopping up or diversion of any highway that is not a trunk road or a special road. Whilst section 116 requires an application to be made by the highway authority, section 117 specifically enables any person, who desires a highway to be stopped up or diverted, to request that the highway authority make an application under section 116.

8.2.22. Furthermore, section 116(4) of the HA 1980 specifically 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'

This undermines another of the reasons provided by Network Rail for proceeding under a TWAO; namely, that a TWAO "permits 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."⁶⁵⁷ The same powers are available under the HA 1980.

8.2.23. Interestingly, section 116 of the HA 1980 includes particular safeguards, for example, local authorities and parish councils are afforded a right of veto over any proposed order (section 116(3)). It is clear that Parliament has intended, through Part VIII of the HA 1980, for specific safeguards to apply to decisions as to the stopping up or diversion of rights of way, and that these safeguards will vary depending on what right of way is at issue and whether any particular circumstances apply (for example, section 118B provides for certain procedures to apply for orders stopping up certain 'relevant highways' for purposes of crime prevention). Again, the Ramblers' Association considers that Network Rail is seeking to frustrate this intricate statutory scheme through use of a TWA Order.

8.2.24. It is notable that Network Rail have clearly outlined the issues they might face if they were to proceed under the HA 1980. In NR18, *Client Requirements Document Anglia CP5 Level Crossing Reduction Strategy*, 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,

⁶⁵⁷ Para 117, Network Rail's Statement of Case. It is also worth noting that section 116(5) allows for an "application or order under this section may include 2 or more highways which are connected with each other".

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 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 Network Rail & the land owners or authorised users.' (Emphasis added.)

- 8.2.25. What appears evident to the Ramblers' Association, from the above quote, is that Network Rail has consciously sought to bypass the protections under the HA 1980, mainly due to the fact that it cannot 'guarantee' success. Instead it is attempting to use a TWA Order by simply referencing 'the greater public benefit of improved railway services'.

Section 13(2) of the TWA

- 8.2.26. It is worth highlighting section 13(2) of the TWA which states:

'...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...'⁶⁵⁸

- 8.2.27. In promoting this subsection, the Minister stated, in relation to a question from the floor as to what the phrase 'other means' referred to:

'That point was raised in Committee. 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

⁶⁵⁸ Subsection 13(2) is "without prejudice" to subsection 13(3) which provides that "The power of the Secretary of State to make a determination under subsection (1) above includes power to make a determination in respect of some only of the proposals concerned, while making a separate determination in respect of, or deferring consideration of, others (and accordingly the power to make an order under section 1 or 3 above includes power to make two or more order(s) on the same application)."

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.'

8.2.28. The Ramblers' Association considers that this statement clearly supports the submissions made above. The TWA should not enable applicants to circumvent established procedures for extinguishing rights of way in circumstances where the extinguishment (and/or diversion) of rights of way does not relate to a works matter. Here, Network Rail is not proposing any distinct 'works matter'. Rather, Network Rail is attempting to promote the extinguishment and/or diversions, in themselves, as the 'works matter'. It is clear, from the above quote, that the TWA is not designed to accommodate this type of application.

8.2.29. Whilst the Minister appears to have had in mind the risk of side-stepping procedures that were already 'established' when the TWA was introduced, the same reasoning must apply equally to the interplay between the broad provisions of section 1 of the TWA and the procedures of sections 118A and 119A (due to be introduced by the TWA at the time the Minister made the above-quoted statement). In short, applicants should not be allowed to unduly use a TWA Order to sidestep specific procedures that have been enacted for stopping up and diverting rights of way (whether or not these are on railway crossings).

8.2.30. In this regard, the Ramblers' Association reiterates the guidance to the TWA, *A Guide to TWA Procedures*, which states, 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 an inland waterway or public right of way where no associated new works requiring a TWA order are proposed. (Emphasis added.)*

8.2.31. The catch-all provision of section 5(6) of the TWA may well anticipate the need to close PRowS as a measure ancillary to a TWA project. This does not, however, justify the promotion of a TWA Order solely concerned with closure of level crossings, for which the TWA itself has provided a designated legislative process.

8.2.32. For those reasons, and in addition to the submissions made above, the Ramblers' Association will be inviting the Secretary of State to refuse to make the Order on the basis that the objects of the Order could have been achieved by other means.

The test to be applied under section 5(6) of the TWA

8.2.33. As has been set out above, the Ramblers' Association submits that it is inappropriate to use section 1 of the TWA to carry out the Proposed Scheme. If, however, section 1 TWA is to be used then the Ramblers' Association submits, as an alternative argument, that the same considerations as would apply to orders made under sections 118A and

119A, should likewise apply to the assessment of individual crossing closures in the Order.

- 8.2.34. The Ramblers' Association welcomes Network Rail's acceptance that the reference to an "alternative right of way" in section (6) TWA means "a convenient and suitable replacement for existing users" as stated in Annex 2 of the *Guide to TWA Procedures*.⁶⁵⁹
- 8.2.35. The Ramblers' Association further submits, however, that in light of the submissions made above, 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.*'
- 8.2.36. If these considerations were to be applied to the assessment of each of the proposed crossing closures in the Order, then this would, at least in practice, help alleviate some of the Ramblers' Association's concerns set out above relating to the inappropriate use of the TWA.
- 8.2.37. In this regard, it is worth noting that the relevant considerations to apply under the tests in sections 118A and 119A of the HA 1980, have been elaborated in DEFRA's *Rights of Way Circular (1/09) (October 2009)*. The circular states, at 5.49, in relation to section 118A:

'Before confirming the order, the Secretary of State, or the local authority in the case of unopposed orders, must be satisfied in accordance with section 118(4) 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.

And, at 5.51, in relation to section 119A:

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

⁶⁵⁹ Network Rail's letter to Nicky Philpott, dated 4 September 2017.

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.

- 8.2.38. Similarly, Stephen Sauvain QC, in *Highway Law* (5th ed) has provided further guidance as to the appropriate considerations to be applied when assessing orders under section 118A (at 9-82):

'On its face, s.118A appears to be a sensible measure for addressing those rail crossings that are on the level, which the railway company has a statutory obligation to maintain but which have become dangerous. The statutory obligation of the railway company is now effectively replaced with a more limited obligation based around the criteria within this section...Notwithstanding the existence of powers of diversion in s.119A, there is no specific duty in s.118A to consider whether the path could not more appropriately be diverted than stopped up. However, this issue, together with the importance of the path to the public, will fall within the "expediency" judgement to be made by both the order-making and the confirming bodies. 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. Furthermore, the Secretary of State has power to require the railway operator to provide a tunnel or bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway at or reasonably near to the crossing to which the application relates instead of pursuing an order under this section.' (Emphasis added.)

And, in relation to section 119A (at 9-84):

'The test to be applied in deciding whether or not to confirm the order is identical to that contained in s118A. However, 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. Necessarily, diversion away from an existing level crossing are going to involve significant re-routing of paths – to the next point at which a path or road crosses the railway. However, where an application is made under s119A, the Secretary of State may require the railway operator to provide a tunnel or bridge, or to improve an

existing tunnel or bridge, to carry the path or way over or under the railway at or reasonably near to the crossing to which the application relates.’ (Emphasis added.)

- 8.2.39. The Ramblers’ Association does not expect these considerations to be controversial. But it is worth highlighting that Network Rail’s proposed use of the TWA procedure must not be allowed to undermine a proper consideration of each crossing closure, as would have been required under sections 118A and 119A of the HA 1980.

Procedure to be applied under section 1 and section 5(6) of the TWA

- 8.2.40. In a similar vein, it is imperative that the Inquiry procedure is conducted in a procedurally fair way, having particular regard to the number of proposed crossing closures to be included in the Order. As is evident from the submissions above, sections 118A and 119A of the HA 1980 were designed to ensure a proper consideration of each crossing closure, and include protections to best guarantee that interested parties, including the Ramblers’ Association, would be duly notified of proposals and afforded an appropriate opportunity to make representations and be heard.⁶⁶⁰

- 8.2.41. If section 1 of the TWA, as opposed to sections 118A and 119A of the HA 1980, is to be used in order to close level crossings then, it is crucial that care is taken to ensure that there is a proper assessment, during the Inquiry, of each crossing closure that is opposed. This will require there to be sufficient time for objectors to put forward their case on each individual crossing and for there to be a proper assessment of all relevant considerations as to expediency of closing or diverting each crossing. The procedure must not be rushed and it is important that crossings are not grouped together in such a way that risks losing sight of the wood for the trees.

- 8.2.42. In this regard, it is worth highlighting that the TWA imposes no deadline by which a TWAO must be made. In fact, the Highways Encyclopaedia states, in the commentary to section 10 of the TWA (dealing with objections) (Vol 2, at 3-2132.1):

‘The Government resisted attempts to impose a statutory time limit on taking decisions, because of the fear that a Secretary of State who made himself subject to such a limit might lay himself open to the criticism that he had not properly considered all the evidence in the case. 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).

Conclusions

- 8.2.43. These submissions are designed to further elaborate on the legal points made by the Ramblers’ Association in its Statement of Case. They were

⁶⁶⁰ See, for example, HA 1980, sch 6, para 2.

also intended to provide appropriate notice to Network Rail, prior to the start of the Inquiry, as to the Ramblers' Association's over-arching concerns relating to the Order and the Inquiry procedure.

- 8.2.44. The Ramblers' Association submits that the use of a TWAO for the Proposed Scheme is inappropriate and risks frustrating the legislative scheme set out in Part II of the TWA that was designed to regulate the closure of level crossings.
- 8.2.45. Alternatively, and without prejudice to the above position, the Ramblers' Association submits that if the Order is to be pursued, it is imperative that the same considerations, as would apply under sections 118A and 119A of the HA 1980, should apply to the assessment of each proposed crossing closure.

8.3. **SoM1- The aims of and the need for the proposed Order**

- 8.3.1. The Ramblers' Association considers that the approach adopted in *the Anglia CP5 Level Crossing Reduction Strategy* [NR18] is flawed. The strategy does not address the balancing exercise that the Secretary of State is required to do in determining whether or not to make an Order under the TWA. The strategy completely fails to mention national and local policies⁶⁶¹ that are key to the balancing exercise. With regard to public rights of way, the diversion of which, in order to facilitate the closure of level crossings, is the sole purpose of this 'scheme' and the sole focus of this 'strategy', it completely fails to mention the test in the Act⁶⁶²; it completely fails to mention the guidance, or give an understanding of what is needed to meet the guidance⁶⁶³; it completely fails to mention the need to justify the application for any Order and the selection of crossings within that application. Ironically, what it does say in the context of Network Rail's perception of the difficulties it has in using the HA 1980 to secure the closure of level crossings is, '*altering public highways is a risky business when one objection, if not withdrawn, could trigger a public Inquiry.*'

- 8.3.2. Network Rail has accepted that the Inspector and in turn the Secretary of State has to be satisfied that the Order should be made and that it is not just a matter of whether or not there are suitable and convenient alternative routes; Network Rail must show that the Order is justified⁶⁶⁴.

Flawed application and a flawed Order

⁶⁶¹ Policy is mentioned just three times - "Common Safety Method policy", "Network Rail Safety policy" and "E&P Asset Policy". Ramblers' Association accept that a strategy developed to cover the Anglian region may be unable to cover the detail of all local planning policy but note the complete failure of the Strategy to mention para 45 of the NPPF and that no planning consultant was engaged on the project (Mr Kenning in response to cross examination by Ms Golden, Day 4).

⁶⁶² It was accepted by Mr Kenning in XX that the CRD does not cover the tests in the TWA.

⁶⁶³ Mr Kenning, principal author of the strategy, accepted that he personally did not know of the suitable and convenient element of the guidance (cross examination by Ms Golden, Day 4)

⁶⁶⁴ Mr Kenning in XX

- 8.3.3. Unsurprisingly, the flawed strategy leads, the Ramblers' Association says, to a flawed application. In reality there is no 'scheme' as envisaged by the Act; the 'scheme' exists solely to close level crossings. Network Rail seeks to rely on broad strategic aims that it cannot in practice directly link to the crossings it has selected for closure. It has been a struggle to identify quite why crossings have been selected for inclusion in this application. Selection is not based on the ALCRM score; yet this is front and centre in Network Rail's evidence⁶⁶⁵. It is not just about crossings that do not meet the industry standard for sighting distances. Many of the crossings proposed for closure have good, clear sightlines for distances that far exceed the industry standard, even for the line speed, never-mind for the speed that the trains on the line actually travel at. The fatalities and weighted injuries score (FWI) was not part of the decision to select a crossing for closure⁶⁶⁶. Even when a substantial part of a community, two County Councils, a District Council, a Town Council and the Ramblers' Association opposes the closure of a crossing, Network Rail will still proceed with it as a part of this scheme⁶⁶⁷.
- 8.3.4. The lack of policy consideration and absence of guidance in the strategy means that it was not possible for Network Rail to consider the spread of relevant crossings and then select crossings for inclusion in this application in the light of the legal test in the Act and relevant guidance and national and local policy. The Ramblers' Association says this is a major flaw in this application.
- 8.3.5. It is impossible to isolate the reasons for choosing the crossings in this 'scheme,' and attempts to identify precisely why crossings were chosen were met with the response that the strategic case supports closure. In Network Rail's ideal world there would be no level crossings but Mr Kenning accepted⁶⁶⁸ that this would be an unbalanced approach. Delinking of closures from rail service improvements means that communities that lose out from a crossing closure do not have the counterbalance of an improved rail service, merely a 'more resilient' service; resilient against a risk that may, in fact, never become an actuality.
- 8.3.6. Pre-application consultation has also been flawed. It is more than regrettable that Network Rail consulted about the S22 crossing in Bury St Edmunds and not in Newmarket itself; a desire not to make a consultation event about 'only one crossing' is not, in the view of the Ramblers' Association a reasonable reason for this failure. Generally, the consultation material gives the impression that safety is a primary factor; we now know that the improvement of safety at level crossings, by closing them, is a strategic aim and cannot be directly linked to the selection of any particular crossing in this application. Network Rail does

⁶⁶⁵ Mr Brunnen in evidence in chief explained that the ALCRM score was relevant because safety was a part of Network Rail's case.

⁶⁶⁶ Dr Algaard's evidence during cross examination by Ms Golden, Day 2

⁶⁶⁷ Mr Kenning's evidence during cross-examination by Mr Hodson, Day 5

⁶⁶⁸ In XX

not accept that the consultation material is misleading; the Ramblers' Association disagrees. Safety is the leading bullet point in the round 1 and round 2 consultation material. In the Ramblers' Association's view this must have had an impact on consultation responses.

- 8.3.7. The assessment of current use of crossings lacks detail, even for important, utilitarian crossings such as S22. It is, therefore, impossible to make an accurate assessment of the likely impacts on the public of particular proposed closures.
- 8.3.8. The Ramblers' Association accepts that Network Rail has a duty to comply with health and safety law and agree with Mr Brunnen that this is a qualified duty⁶⁶⁹, i.e. 'so far as is reasonably practicable'. Network Rail's view is that all level crossings pose a risk and if it can close crossings with even a low risk, then it will do so⁶⁷⁰. Mr Brunnen also accepted⁶⁷¹ that all roadside walking has a safety risk and that there "is a risk across many aspects of society" and that "any level crossing open for the public is fit for use today, but that is not to say that we [Network Rail] don't have concerns and that we [Network Rail] wouldn't seek to improve or change those crossings in the longer term". The Ramblers' Association agrees with Network Rail that there needs to be a balancing act and that it is difficult to balance interests in favour of closing the crossing with interests against. However, the overarching and generalised objective of reducing the safety risk at level crossings simply cannot be used as a justification for the closure of these crossings in this Order.
- 8.3.9. Similarly, the Ramblers' Association accepts that the closure of crossings reduces the cost to Network Rail of maintaining level crossing furniture, but as Dr Algaard agreed⁶⁷² this, of itself, it not enough to justify the selection of crossings in this Order.
- 8.3.10. Selection of crossings to close is not based on the cost benefit analysis score⁶⁷³, also highly prominent in Network Rail's evidence.
- 8.3.11. We are left to fall back on the content of para 2.1.2.1 of the 'strategy': "*Mainline crossings that clearly are unused or have extremely little use would be extinguished. Also, crossings that would be included are 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 on Network Rail land wherever possible.*" Even this does not cover the inclusion of some crossings, S22 Weatherby, for example. Dr Algaard's evidence was that for phase 1⁶⁷⁴

⁶⁶⁹ Mr Brunnen's evidence during cross examination by Ms Golden, Day 2

⁶⁷⁰ Mr Brunnen's evidence during cross examination by Ms Golden, Day 2

⁶⁷¹ Mr Brunnen's evidence during cross examination by Ms Golden, Day 2. Mr Kenning also accepted this during cross examination by Ms Golden, Day 4

⁶⁷² Dr Algaard's evidence during cross examination by Ms Golden, Day 3

⁶⁷³ Dr Algaard's evidence during cross examination by Ms Golden, Day 2 and Mr Prest's answers to the Inspector's questions.

⁶⁷⁴ As defined in her proof at para 2.6.6

of the strategy the balancing act was whether or not [Network Rail] could provide a suitable and convenient alternative⁶⁷⁵. This approach is fundamentally flawed. When Mr Kenning, principal author of the strategy, was asked to explain quite what was meant by a nearby alternative route he struggled to define it stating that there was no clear definition; that it was more just an idea; a principle⁶⁷⁶. It is understood that Network Rail does not necessarily accept that a nearby alternative is a key test⁶⁷⁷. The Ramblers' Association submits that a lack of clarity is symptomatic of the flawed approach.

8.3.12. The public is being asked to give up routes that are direct and convenient⁶⁷⁸, to give up routes that are unique within Suffolk⁶⁷⁹, and to accept inferior alternatives⁶⁸⁰, many of which include unattractive, unsuitable, inconvenient and unsafe elements of on road or roadside walking⁶⁸¹ and to accept all this, for broad strategic aims to deliver safer, cost-effective improved rail services⁶⁸²; aims that we can all sign up to, but remain 'some improvements tomorrow, and are never improvements today'. In some cases, the evidence would suggest that no service improvements are likely to be made in the foreseeable future⁶⁸³. Network Rail accepts that it has to justify this Order⁶⁸⁴. The Ramblers' Association says that it has failed to do so and moreover the objects of this Order could have been achieved by use of other legislation⁶⁸⁵.

8.3.13. In contrast to the HA 1980 administrative order processes (processes which the Ramblers' Association says provide the appropriate mechanism for obtaining a diversion⁶⁸⁶), by making this application Network Rail has been able to avoid specifying detail. This may be perfectly acceptable where the closure of a public right of way is incidental to the objectives of a scheme; here, however, it is a major flaw. For example, there is no certainty that where 700 mm⁶⁸⁷ of cleared, level verge for walking is required to deliver the proposed alternative route that this width of verge legally subsists. The first any landward householder is likely to know of Network Rail's detailed designs

⁶⁷⁵ Dr Algaard's evidence during cross examination by Ms Golden, Day 3

⁶⁷⁶ Mr Kenning's evidence during cross examination by Ms Golden, Day 4

⁶⁷⁷ Intervention by Ms Lean during Ms Golden's cross examination of Mr Kenning, Day 4

⁶⁷⁸ S22 Weatherby described by Mr Prest as a "short-cut" the alternative was accepted as not being a short-cut (Sue Tilbrook in XX)

⁶⁷⁹ S01 Sea Wall and S02 Brantham High Bridge (the evidence of Mr Knight)

⁶⁸⁰ S31 Mutton Hall

⁶⁸¹ S23 and S24, S27 and S28, S69.

⁶⁸² Passenger and freight

⁶⁸³ S22 Weatherby

⁶⁸⁴ Mr Kenning in XX

⁶⁸⁵ The Ramblers' Association re-iterate that the Inspector is invited to recommend refusal of the Order under section 13(2) of the TWA - that the objects of the order could be achieved by other means.

⁶⁸⁶ Either under the 'standard' powers or under the 'special' powers inserted by the Transport and Works Act

⁶⁸⁷ The width Ms Tilbrook considers to be the minimum required width (evidence in chief, Day 5). Mr Haunton and Mr Russell consider that the minimum would be 750mm (evidence in chief, Day 5) and Mr Russell's evidence that it would be desirable to have 1.2m.

on the land in front of their home is when the works commence⁶⁸⁸. Network Rail has not ensured that the lateral extent of highway maintainable at public expense exists. Mr Russell's evidence was that he would expect this to be done at a preliminary stage⁶⁸⁹ together with any ecological assessment that may be required where hedges would need to be removed⁶⁹⁰. This issue would simply never arise under a HA 1980 Order; case law⁶⁹¹ and policy⁶⁹² prevent the purported diversion of off-road rights of way onto carriageway highways.

- 8.3.14. The Highway Authority has concerns about the deliverability of some proposals⁶⁹³; the Ramblers' Association shares these and the Secretary of State is expected to balance these concerns against Network Rail's assertions that engineering solutions can be found in all cases. If they cannot be found, Network Rail says that the safeguard position is that the Highway Authority will not certify the new route and the crossing may not be closed. There are two major flaws in this 'safeguard'. Firstly, the ability of Network Rail to trigger the certification clause⁶⁹⁴ leaving an under-resourced Council little or no time to properly inspect the works; with the default that certification will be presumed if the Council has not responded within 28 days, and, secondly, the fact that works within the existing highway are not in any way covered by the clause⁶⁹⁵.
- 8.3.15. The Ramblers' Association has already raised the inadequacy of what has been described as the 'locking mechanism' in the certification clause in respect of the Cambridgeshire Crossing Reduction Order and have made similar submissions in writing in advance of the filled order session for the present Inquiry. Suffice to say that the Ramblers' Association considers that where a whole package of proposals has been proposed (or where the Inspector determines that they are necessary) the Ramblers' Association would wish to see a mechanism for ensuring that all items are delivered to the satisfaction of the Highway Authority before any crossing is closed.
- 8.3.16. Network Rail has limited powers to enter and survey land in private ownership⁶⁹⁶; it has therefore not always been possible for it to survey the land that will be crossed by new public rights of way and it has not been possible for SCC to enter onto private land either. In contrast the HA 1980⁶⁹⁷ gives SCC extensive powers to access land without notice.

⁶⁸⁸ Mr Russell's evidence was that he would not rely on the 'hedge-to-hedge' presumption but would carry out investigations to ascertain the extent and status of the verge (evidence in chief, Day 5).

⁶⁸⁹ During cross-examination by Ms Lean, Day 5

⁶⁹⁰ In answer to questions from the Inspector, Day 5

⁶⁹¹ R v Lake District Special Planning Board, ex parte Bernstein (QBD) 1983 Times, 3 February

⁶⁹² Para 31, The Planning Inspectorate Rights of Way Section Advice Note 9 (9th revision January 2018)

⁶⁹³ See for example the evidence of Annette Robinson in respect of S01

⁶⁹⁴ Article 16 of the draft Order

⁶⁹⁵ Ramblers' Association are not comforted by the content of the note Design Approval and Certification Process [NR-INT-79] in this regard.

⁶⁹⁶ See Appendix A to Ms Tilbrook's rebuttal proof (Suffolk County Council) p 2 final paragraph

⁶⁹⁷ Section 289

- 8.3.17. There is no agreed method for assessing the risk of crossing the railway on the level as against the risk of crossing a carriageway highway, or the risk of walking along or beside one. Where this is an element of a proposal, the Secretary of State has no objective means by which he can determine whether the public are being moved from a risky, but in fact, relatively safe level crossing to a far less safe carriageway environment⁶⁹⁸. For some proposals Network Rail has decided that recommendations by the road safety auditors it commissioned to audit proposals should be disregarded, or do not apply to the current proposal. This is despite objections on road safety grounds by SCC, that is, the Highway Authority. The Ramblers' Association maintains that the road safety audits were not carried out strictly in accordance with HD 19/15. Technically correct is often the best form of correct and the reasons for the requirement that the Highway Authority is the overseeing authority in the process are now obvious. Network Rail is not the Highway Authority and will not be responsible for any part of the highway network longer term. SCC is the Highway Authority and will be responsible. If the Order is made, the Ramblers' Association would want to see any further road safety audits carried out in accordance with SCC's requirements and for the Council to have the final say over the need for and delivery of any safety improvement works.
- 8.3.18. It may be unusual for the Ramblers' Association to express sympathy for farmers and landowners, but this Inquiry has heard the very real concerns of farmers⁶⁹⁹ who are faced with the creation of permanent public rights of way over land they own or farm and who are struggling to understand the effect this will have because of the absence of detail. This would simply not arise in a 1980 Act order process.
- 8.3.19. It is difficult, if not impossible, to adequately assess whether proposed routes are going to be suitable and convenient where the detailed line and construction are not known. Again, this is not an issue that arises, in practice, under the HA 1980 process. Whilst this may be acceptable in a scheme where there are 'works' and the diversion of a right of way is incidental to the delivery of the scheme; it is wholly inadequate when the sole purpose of the 'scheme' is to divert and stop up public rights of way.
- 8.3.20. The Ramblers' Association says that these are all reasons why the HA 1980 processes are to be preferred and should be used where Network Rail's sole aim is, as here, to close crossings. For example, the concerns about deliverability of new routes and the cost to the Highway Authority of ongoing maintenance of those routes can be very simply dealt with under section 119A(6)⁷⁰⁰, which allows for a diversion order under that section to provide that Network Rail and its successors maintain any new path. One might reasonably think that if Network Rail knew that it

⁶⁹⁸ Mr Kenning when asked in evidence in chief (Day 3) about the lack of a direct comparator, agreed that there was not one, a situation he described as "unfortunate".

⁶⁹⁹ For example, Mr Paul Baker in respect of crossings at Bacton.

⁷⁰⁰ NR-INQ-63 Tab 4

would be liable in perpetuity for maintenance, we would have a lot more detail about precisely what is proposed.

- 8.3.21. Further, the Ramblers' Association says, the order-making powers in the HA 1980 were designed by Parliament to correctly balance the needs of railway operators and the protection of the public using level crossings with the very real benefit to the public of the public rights of way network. As the Ramblers' Association said in opening: "Network Rail is not the only interested stakeholder in a level crossing". To which the Ramblers' Association would add that at times Network Rail seems dismissive of or unconcerned by the concerns of the public and the public authorities: very important stakeholders in public rights of way.
- 8.3.22. It is also clear that Network Rail does not particularly value the amenity of public footpaths. Ms Tilbrook was clear that in her view that the enjoyment of a route does not define its suitability. The Ramblers' Association cannot agree. For leisure walkers the enjoyment of a route is of fundamental importance. Mr de Moor's evidence shows how routes with good amenity persuade people to walk for short utilitarian journeys. The Ramblers' Association submits that it was for precisely these reasons that Parliament introduced section 119A⁷⁰¹ to the HA 1980 and that this provision correctly embodies the balance of factors when considering closing rights of way level crossings.
- 8.3.23. Once a level crossing is closed, it is closed forever⁷⁰². As Network Rail accepts,⁷⁰³ the railway is a barrier to the rights of way network; walkers can only cross the railway where crossing points are provided. Deliberately adding to the effect of that barrier by closing crossings that have the potential to become parts of well-used walking and cycling infrastructure along quiet routes away from traffic⁷⁰⁴ is not in the public interest and on the limited strategic case advanced in respect of particular crossings simply cannot be justified in the view of the Ramblers' Association.

8.4. **SoM2 - Alternatives**

- 8.4.1. Without prejudice to the Ramblers' Association's objections to the underlying rationale of Network Rail's strategic case, the Ramblers' Association objects to the manner in which that strategy, even if it were to be justified (and the Ramblers' Association does not accept that it is), has been implemented.
- 8.4.2. Once Network Rail had decided on the *Anglia CP5 Level Crossing Reduction Strategy*,⁷⁰⁵ and the crossings that would be closed, it then needed to properly assess each proposed alternative route and determine if it would be suitable and convenient. The Ramblers'

⁷⁰¹ NR-INQ-63 Tab 4

⁷⁰² And as Mrs Bradin said in evidence once a crossing has gone her experience is that it will not be re-opened

⁷⁰³ Mr Kenning in XX

⁷⁰⁴ Such as S22 and S25

⁷⁰⁵ NR18

Association disputes both that: (i) a proper assessment has been done; and, (ii) that a number of the proposed alternatives are suitable and convenient.

8.4.3. The work carried out by Mott MacDonald in assessing the use the public makes of crossings is limited to a "snap-shot" 9-day census (survey)⁷⁰⁶, an assessment of consultation responses and a map based exercise looking at connecting rights of way (for rural routes) and likely destinations (for S22 in Newmarket). On a number of occasions, it has been accepted that 'destination and origin' of users will affect whether, and the degree to which, the proposed alternatives are 'suitable and convenient'. However, Network Rail does not in fact know where users are coming from or where they are going to. In two cases⁷⁰⁷ the crossings proposed for closure are on routes that lead directly to premises occupied by football clubs; yet in each case the 9-day census was carried out outside of the football season. In no case, not even at Weatherby, has Network Rail actually asked users, identified in its survey as using the crossing, where they are going to and where they are coming from. As Dr Wood pointed out in her evidence, this naturally occurred to her. It is surprising that it did not occur to Network Rail or its contractor Mott MacDonald⁷⁰⁸. The Ramblers' Association considers that this failure has led to a lack of detailed evidence about destination and origin and limits the accuracy of any assessment of how suitable and convenient the alternative route is.

8.4.4. Similarly, Network Rail has a limited understanding of why people chose to use a particular route that includes a level crossing. Though it was accepted that there may be differing reasons why they do make use of a crossing⁷⁰⁹, in practice there is no data on which to base an assessment of why people use a particular route, even when there are alternatives available to them. The Ramblers' Association notes that the team of experts Mott MacDonald provided did not include anyone with specific expertise in rights of way⁷¹⁰, someone who might be expected to have an understanding of recreational and utilitarian uses of public rights of way and it chose not to include the highway authority's specialist officers when carrying out site visits and assessing the alternative routes⁷¹¹. Moreover, surprisingly, Mott MacDonald did not consider it necessary for one person (as distinct from different people from different teams within Mott MacDonald) to walk each individual proposed alternative route and assess it.

⁷⁰⁶ Carried out to a Network Rail standard, it was accepted that this does not pick up on 'non-visible' disabilities (Ms Tilbrook in answer to cross-examination by Ms Golden, Day 8)

⁷⁰⁷ S22 Weatherby and S69 Bacton

⁷⁰⁸ Dr Wood, Day 19

⁷⁰⁹ For example, Ms Tilbrook's acceptance in cross-examination that there was a difference between using S22 to take a child to school and using it once a month to attend a football match.

⁷¹⁰ Ms Tilbrook agreed that her previous experience with level crossing closures was with regard to the ECML project that did not proceed to the Order stage (XX Day 6).

⁷¹¹ During cross-examination by Ms Golden, Day 5

- 8.4.5. With this in mind it is difficult to see how anyone can conclude that any given alternative route is 'convenient' i.e. fitting in well with a person's needs, activities and plans involving little trouble or effort; when there is a very limited understanding of the needs, activities and plans of users. The Ramblers' Association submits that in practice what has been done in the assessment is much more circumscribed, as reflected by Ms Tilbrook's evidence⁷¹² that: '*suitability and convenience of the proposed route has to be considered for each crossing based on local circumstances and in the context of usage, the local environment and the relationship of the existing route to the wider PRow and highway network.*' This is in contrast to the way that the County Council would assess a diversion⁷¹³.
- 8.4.6. The Ramblers' Association takes the view that where the proposed alternative route already exists as highway and the public could use it if they wished to, the fact that the public continue to use the level crossing must be factored in to the consideration of whether or not the alternative route is suitable and convenient⁷¹⁴. People vote with their feet.

⁷¹² Paragraph 1.11.1 of Ms Tilbrook's main proof

⁷¹³ See the evidence of Mr Kerr during cross examination by Ms Lean, Day 8

⁷¹⁴ For example, S22 Weatherby

8.5. **SoM3 – Policy**

8.5.1. The Ramblers' Association adopts the submissions made on behalf of the SCC and SEBC on the 16 April [OP/INQ/60].

8.6. **SoM4 – The level crossings**

8.6.1. Without prejudice to the Ramblers' Association's position that the Order in its entirety is not justified and should not be made, the Ramblers' Association has the following submissions to make about the individual crossing proposals to which they have objected.

8.6.2. ***Safety of pedestrians walking alongside roads***

8.6.2.1. The Ramblers' Association accepts that the existing rights of way network is fragmented and many countryside walks will involve an element of roadside walking and, sometimes, within-carriageway walking too. The causes of this are varied but may be due to the way the network has developed organically over centuries, or to more recent failings such as lack of weight being given to the needs of the rights of way network when planning developments or road schemes. For example, the A14 with its pedestrian crossing point to the north of Footpath 001 Higham (S23), presumably intended to allow pedestrians to cross at grade being a case in point.

8.6.2.2. When considering proposals that involve roadside walking, the issue of how much off-carriageway width is needed for the safe passage of pedestrians is one of particular concern. The Ramblers' Association would much prefer to see no increase in roadside walking at all; walking alongside roads is not attractive to people who walk in the countryside for health and recreation. Where roadside walking has to happen, the Ramblers' Association seeks to ensure that it is for the minimum length necessary and most importantly that it is safe.

8.6.2.3. The Ramblers' Association notes that Ms Tilbrook's evidence⁷¹⁵ was that 450mm of non-vehicle running space was required to protect the parapet of the Barrell's Road overbridge. Notably the same distance is required as clearance for street furniture. The Ramblers' Association relies on Mr Russell's evidence⁷¹⁶ that "*where a verge is less than 500mm a vehicle on the carriageway would not be able to pass a pedestrian who was walking along the verge without the risk that the pedestrian would be hit by part of the vehicle*". With this in mind, the Ramblers' Association continues to contend that much of the provision for pedestrians in the proposals is inadequate and unsafe.

8.6.3. ***S01 - Sea Wall***

8.6.3.1. As explained by Mr Knight in his evidence, the experience of this route is not replicated anywhere else in Suffolk and the view of the estuary from the steps leading up to the crossing is un-paralleled. For these reasons

⁷¹⁵ In XX day 20

⁷¹⁶ Para 2.20 main proof

the Ramblers' Association considers that the suggested replacement is not 'suitable'. The Ramblers' Association respectfully requests that this crossing is removed from any made Order.

8.6.3.2. Without prejudice to that position, the Ramblers' Association considers that the proposal to remove the cul-de-sac path (Footpath 13) that could remain if the crossing were to be closed is unacceptable. Particularly, as it transpires that Natural England did not in fact object and did not require the closure of the cul-de-sac path. The Ramblers' Association, therefore, supports the County Council in requesting that if the crossing is closed that this short section of path be retained.

8.6.3.3. The Ramblers' Association respectfully requests that this crossing is removed from any made Order.

8.6.4. **S02 - Brantham High Bridge**

8.6.4.1. The footpath leading to S02 Brantham High Bridge crossing offers a rare experience in Suffolk and, as described by Mr Knight in his evidence, takes the walker across open landscape on sandy ground. The crossing at S02 provides a connection from the south, without any further use of a road. The replacement involves walking alongside the busy A137 in sharp contrast to the tranquillity offered by the existing route; it is a purely functional route and is unsuitable as a replacement for a route that is primarily used for recreational purposes.

8.6.4.2. Having now heard SCC's evidence about its concerns as to the sustainable delivery of the proposed new route in some places, especially the railway embankment, the Ramblers' Association shares those concerns.

8.6.4.3. The Ramblers' Association respectfully requests that this crossing is removed from any made Order.

8.6.5. **S22 - Weatherby**

8.6.5.1. The Ramblers' Association identifies that there are considerable concerns about the particular way Network Rail went about the consultation exercise for this crossing. Mr Kenning agreed that in hindsight holding consultation about this crossing in Bury St Edmunds was "*not the best thing to do*".⁷¹⁷ He later agreed with Dr Wood⁷¹⁸ that Bury St Edmunds was nearer 15 miles away from Newmarket, than 11, and this was more than the ideal of a consultation venue being no more than ten miles away from a crossing, that Network Rail had set itself.

8.6.5.2. The Inquiry heard Dr Wood's concerns about the limitations of consulting via leaflets and written material in a local community where a substantial proportion of the affected population have English as a second language⁷¹⁹. The Inquiry heard Mr Hodson's concerns about the

⁷¹⁷ Evidence during cross-examination by Ms Golden, Day 4

⁷¹⁸ Day 19

⁷¹⁹ Day 19

limited effect of the leafletting exercise⁷²⁰. Mrs Dunning could not recall any leaflets⁷²¹ and maintained that position even though Network Rail's map showed her estate as included in the leaflet 'drop'⁷²². Finally, it was originally Network Rail's intention not to have sessions of this Inquiry in Newmarket. All this for the most used and the most consistently used crossing in this application.

- 8.6.5.3. The Ramblers' Association submits that this crossing is part of a well-used local route, used for a number of purposes. Ms Tilbrook agreed that this was the sort of utilitarian route that Mr de Moor identified. Indeed, it well illustrates that sort of route; the route that people use instead of getting in a car. Its importance in linking the two parts of the town of Newmarket has been a theme in the evidence of a number of objectors.
- 8.6.5.4. Network Rail's position that it believes there is no right of way across the crossing is unpersuasive. Mr Kenning was unable to explain why Network Rail would *permit* the public to use a high risk crossing, at Network Rail's liability, if there was no right of way across it⁷²³. The Ramblers' Association submits that the inclusion of this crossing in this scheme has more to do with Network Rail's current view, based on the 'Zulu's crossing' case⁷²⁴, to which Mr Kenning referred, that there is no public right of way over the crossing. Mr Kenning agreed with Ms Golden,⁷²⁵ that in answer to her cross-examination on the strategic case, he had indicated that had Network Rail considered that a public right of way existed over the crossing its approach to the crossing would be different. On Day 19 of the Inquiry he sought to recover from that position. The Ramblers' Association submits that Mr Kenning's evidence to the Inquiry on Day 4 that the decision to close this crossing was "more about the status of the crossing" than its level of use⁷²⁶ is to be preferred.
- 8.6.5.5. Irrespective of the actual status of the crossing, it is very clear from the evidence that its closure to public use will have a serious and adverse effect on the local community. Representatives of the local community have given evidence over several days about that effect and having heard the evidence the Ramblers' Association submits that the adverse effects outweigh the alleged benefits to the public as identified by Network Rail. The Ramblers' Association considers that a different solution to Network Rail's concerns about this crossing needs to be sought. Closing a crossing is not the only way of removing or reducing the risk (as was accepted at a number of points in the Inquiry). The Ramblers' Association would not presume to suggest what that

⁷²⁰ Day 20

⁷²¹ Day 19

⁷²² Day 20 - comment in response to the document submitted by Network Rail

⁷²³ XX Day 19

⁷²⁴ *Ramblers' Association v Secretary of State for the Environment* 2017 EWHC 716 (Admin) NR-INQ-63 Tab 14

⁷²⁵ Evidence during cross-examination by Ms Golden, Day 19

⁷²⁶ Evidence during cross examination by Ms Golden

solution might be but say about this crossing what was said about S25; once it is gone, it is gone for ever and if that happens the railway will be even more of a barrier to the people of Newmarket.

- 8.6.5.6. S22 is considered by Network Rail to be a high risk crossing. The Inquiry heard that the crossing is 220 yards from the end of the 25 mph speed limit, which as Mr Kenning explained⁷²⁷ was a legacy of the transition from a number of lines to the single track now in place. The Ramblers' Association respectfully requests that the Inspector considers this fact when weighing in the balance the claimed reduction in risk from the closure of this crossing.
- 8.6.5.7. Turning to the question of the suitability and convenience of the proposed alternative route, Ms Tilbrook agreed that desire lines were important⁷²⁸ (but thought it was hard to define what a desire line would be). In the Ramblers' Association's view this crossing is a good example; people could use the 'alternative' but they don't, they use the crossing. That very strongly suggests that the alternative is not suitable and convenient for walkers, or for cyclists. Mr Prest described the route over the crossing as a short cut⁷²⁹; Ms Tilbrook agreed⁷³⁰ that the alternative route could not be described as a short cut.
- 8.6.5.8. Ms Tilbrook agreed that the walking speed we have agreed on is the walking speed for an averagely fit adult, not someone walking with a pushchair or young children⁷³¹. The Inquiry heard from Dr Wood about the use made of the level crossing by parents taking children to All Saints School, there is the limited information from the census⁷³² of use of the crossing by adults with children. This is a particular factor when considering the suitability and convenience of the proposed alternative route at S22.
- 8.6.5.9. Ms Tilbrook explained the assessment was done on the basis of pedestrians, and cyclists.⁷³³ Legally cyclists cannot use the footway⁷³⁴ and must use the carriageway or alternatively push their bicycle along the footway; alongside and together with other users. Mr Hodson expressed his concerns about the difficulties this already causes and noted that at times cyclists do not dismount⁷³⁵. Ms Tilbrook accepted that visibility for pedestrians using the alternative route to see under the bridge was limited in some aspects⁷³⁶.

⁷²⁷ Day 19

⁷²⁸ Evidence during cross examination by Ms Golden, Day 5

⁷²⁹ Para 19.6 of his proof

⁷³⁰ XX, Day 14

⁷³¹ XX, Day 14

⁷³² Ramblers' Association agree with Mr Woodin that the census is a very blunt tool to assess the use of a crossing in the middle of a town

⁷³³ XX, Day 5

⁷³⁴ Though we heard from both Councillor Hurst and Mr Hodson that some cyclists already do use the footway, Day 20.

⁷³⁵ Evidence in chief, Day 19

⁷³⁶ In answer to a question from the Inspector, Day 5

- 8.6.5.10. The proposed alternative route is alongside carriageway and the biggest indicator of the present unsuitability and inconvenience of it, is that the public in considerable numbers chose the level crossing route instead.
- 8.6.5.11. The Ramblers' Association submits that the inclusion of this crossing in the Order is premature; consultation and assessment of the current use and purposes for which it is used have been inadequate; closure has not been justified by Network Rail, the proposed alternative route is not suitable and not convenient, added to which a formal application for a Definitive Map Modification Order has now been submitted to the County Council. For these reasons the Ramblers' Association respectfully requests that this crossing is removed from any Order.
- 8.6.6. ***S23 - Higham and S24 - Higham Ground Frame***
- 8.6.6.1. The Ramblers' Association has treated these crossings as linked. The Ramblers' Association's concerns are primarily that the proposed new routes involve road walking or roadside walking on Higham Road where there is insufficient cleared level verge to safely accommodate walkers. Higham Road is subject to morning and evening peak traffic and at these times walkers in the road would be particularly vulnerable. The selected crossing point on the A14 slip-road is in our view dangerous requiring walkers to cross at a point where they have to negotiate two way traffic and turning traffic, an area of conflict. The location of this crossing point seems to the Ramblers' Association to tend to invite walkers heading south over the railway to continue along Coalpit Lane; a relocation to the west would tend to dissuade walkers from this option. The Ramblers' Association does not agree with the evidence of Ms Tilbrook on this point. There is insufficient width on the Coalpit Lane overbridge to allow for safe passage of pedestrians at the same time as vehicles are crossing. We rely on the clear evidence of Mr Russell in respect of these matters.
- 8.6.6.2. With regard to S24, whilst it is accepted that it is no part of Network Rail's proposals that walkers should use Coalpit Lane we consider that insufficient consideration has been given to the practicalities of the diversion and in particular to the likelihood, if both S23 and S24, are closed that walkers will in practice use Coalpit Lane. The fact that walkers can choose to do so now is in our view not relevant since Network Rail's proposals reduce the choices that walkers currently have.
- 8.6.6.3. Overall, many of the concerns the Ramblers' Association has, could be addressed by additional commitments to specific works (such as re-profiling verges), the re-location of the crossing point on the west bound slip to the A14 and re-design to reduce the possibility of walkers using Coalpit Lane. The Ramblers' Association is disappointed that Network Rail is unable to commit to all or any of these improvements; leaving the Ramblers' Association no alternative but to sustain an objection.
- 8.6.7. ***S25 - Cattishall***

- 8.6.7.1. The Ramblers' Association shares the disappointment of Mr White⁷³⁷ that Network Rail is seeking to close the Cattishall level crossing despite the negotiations concerning the provision of a bridge in association with the North East Bury St Edmunds site development to the north of the railway. Having gained recognition of the importance of rights of way and access to countryside and sustainable transport in local planning and national policies, it is dispiriting to see a public body getting in the way of delivery of those policies. It is particularly dispiriting in the light of Mr White's evidence concerning the detailed work that has gone into planning for a green route on the Moreton Hall site, a route that directly connects to the Cattishall crossing bridge site.
- 8.6.7.2. The Ramblers' Association is particularly concerned that Network Rail is unable to give any assurance that it will not seek payment for air rights over the railway. Mr Kenning may be unable to see why Network Rail would not assist with the bridge project. The Ramblers' Association can see that removal of public rights over the crossing removes a very major incentive for Network Rail to be more active in securing a bridge; and, further that the removal of rights puts Network Rail in a strong commercial position vis-à-vis the developer. The suggestion that the closure of this crossing should go ahead because a separate process under the Highways Act might be required is unconvincing. Mr White in his evidence made it clear that the local planning authority would require two crossing points of the railway and one of these would be a bridge at Cattishall. An appropriately worded condition to that effect would engage the Town and Country Planning Act diversion processes⁷³⁸.
- 8.6.7.3. If the crossing is closed and no bridge is provided at Cattishall, all users will have to use the proposed alternative route. As Mr White noted some users may prefer not to use an underpass, but they will no longer have a choice to go elsewhere. The alternative route will be less direct for some users and less convenient for others. In her evidence⁷³⁹ Mrs Bradin set out her concerns about a 3m wide underpass that will be used by cyclists, horse riders, walkers and ultimately families with pushchairs and children. In her view this was too narrow. She would still have those concerns even if a bridge is provided.
- 8.6.7.4. It was Mrs Bradin's very clear view that a bridge should be provided as soon as possible, but that it is not necessary to close the crossing before the bridge is built. There is still a need for the crossing at Cattishall; a bridge provides the safest solution. Factors that applied at Great Barton apply here: this is part of the National Cycleway Network; and, a bridleway is proposed as a 'downgrading' of the unclassified road south of the crossing.⁷⁴⁰

⁷³⁷ Mentioned several times in response to cross examination by Ms Lean, Day 18

⁷³⁸ Section 257 of the Town and County Planning Act 1990

⁷³⁹ EIC Day 20

⁷⁴⁰ An application having been made as part of Taylor Wimpey development, Mr White's evidence and confirmation from Mr Woodin, Day 20

- 8.6.7.5. For these reasons the Ramblers' Association says that the inclusion of this crossing in this Order application is premature; we support the County Council's view that this crossing should be dealt with in a later phase of the Anglia project, and would hope then for a wider public-orientated solution, rather than a narrow Network Rail focussed solution. It may not be right for Network Rail to be held to ransom;⁷⁴¹ but equally it is not right for the position, potentially, to be reversed, for Network Rail to be able 'to hold to ransom' the developer. Or for Network Rail to be able to thwart the careful policies of the local planning authority, and at the same time reduce opportunities to access the rights of way network.
- 8.6.7.6. The Ramblers' Association strongly contends that a bridge is essential at S25 Cattishall and respectfully request that this crossing be removed from any made Order.
- 8.6.8. ***S27 - Barrell's and S28 - Grove Farm***
- 8.6.8.1. The Ramblers' Association notes that Mr Russell's evidence in respect of the possibility of two cars attempting to pass one another on the Barrell's Road bridge has now been accepted and that Ms Tilbrook's evidence is now, that at detail design stage improvements can be made to the 'verges' to make them more suitable as a refuge for pedestrians. Similar improvements may also be made to the bridge on the un-named road. Whilst the Ramblers' Association welcomes this new position there is no guarantee that the measures that Mr Russell considers are essential for pedestrian safety will be delivered. Regarding the approach strip, Mr Russell would expect a full detailed design that takes visibility into consideration in order to determine the extent of protection (for pedestrians) needed on the approaches to the bridge (both the Barrell's Road bridge and the bridge on the un-named road).
- 8.6.8.2. Until this is done the situation cannot be properly assessed. The Ramblers' Association therefore continues to object to the inclusion of this crossing on road safety grounds in respect of both bridges.
- 8.6.8.3. The Ramblers' Association considers that the perception of safety is particularly important for this proposal.
- 8.6.8.4. What is proposed may be objectively safe but the perceptions of the public and of Mr Fisher,⁷⁴² an experienced walk leader, remain relevant when assessing suitability and convenience. If people do not consider that a route is safe, they will not use it.
- 8.6.8.5. We heard from Mr Russell that there is no design guidance on perception of safety and no research to assist with this.

⁷⁴¹ Mr Kenning's evidence in answer to cross examination by Ms Golden, Day 5 (in respect of disused private vehicle crossings)

⁷⁴² EIC day 21

- 8.6.8.6. The Ramblers' Association also objects to the diversion proposals because of the loss of amenity and enjoyment, the diversion alongside the railway line (to the south) is unacceptable. Mr Fisher's evidence⁷⁴³ was of the current tranquillity of the existing routes and their use in the Ramblers' Association's guided walks in this area. A particular attraction to include in a circular route being the developing, nearby nature reserve.
- 8.6.8.7. In contrast, in addition to including two road bridges that he considered to be unsafe, the proposed alternative routes include sections of walking alongside the railway. He estimated that the east-west section of the route to the south of the line would take about 15 minutes to walk. Trains pass along this line on average 1 in every 12 minutes.
- 8.6.8.8. Mr Fisher considered that although he might use the road bridge, he would not lead a guided walk over them. It is accepted that his view relates to the situation 'as is' but the Ramblers' Association is unable to properly assess matters absent of detailed design, a common theme in the Ramblers' Association's objection to this Order application. Overall, the Ramblers' Association considers that the alternative routes proposed are not suitable and convenient.
- 8.6.8.9. For these reasons the Ramblers' Association respectfully requests that these crossings be removed from any made Order.
- 8.6.9. **S31 - Mutton Hall**
- 8.6.9.1. Ms Tilbrook accepted that perception of safety by users was "a relevant point"⁷⁴⁴, and that for walkers out on a rural walk using the verge was "not as pleasant"⁷⁴⁵. Mr Kenning accepted that the short section of road walking was "slightly more detrimental"⁷⁴⁶. In the Ramblers' Association's view, the case for closure of this crossing has not been made out and the alternative proposed cannot be said to be suitable and convenient for walkers. The Ramblers' Association respectfully requests that this crossing is removed from the Order.
- 8.6.10. **S69 - Bacton**
- 8.6.10.1. Network Rail's approach to the alternative route at this crossing embodies many of the Ramblers' Association's concerns about the process that Network Rail and Mott MacDonald have adopted overall.
- 8.6.10.2. There was no attempt to ascertain what use was made of the crossing during the football season, which is a remarkable omission, given the location of the football club. Although Ms Tilbrook's evidence was that some CCTV censuses were undertaken in October and November, she was not sure what pushed Mott MacDonald to do these at this time⁷⁴⁷. Clearly it was not the likelihood of finding additional use in those months

⁷⁴³ Day 21

⁷⁴⁴ Examination in chief, Day 5

⁷⁴⁵ In XX

⁷⁴⁶ In XX, Day 16

⁷⁴⁷ Examination in chief, Day 5

at the Bacton crossing, because no census was done in those months here. It was clear from Ms Tilbrook's evidence that assumptions have been made as to attendance at the Club.

- 8.6.10.3. In the Ramblers' Association's view the road safety audit clearly identifies issues with the intended use of the western verge of the B1113; this is not just applicable to the original proposal but remains an issue for the current proposal. This is where the failure to correctly implement HD 19/15⁷⁴⁸ is particularly significant; had the 'overseeing authority' been Suffolk County Council then it is unlikely that it would have accepted that concerns no longer applied. The evidence of both Mr Haunton and Mr Russell was clear as to these concerns. Ms Tilbrook accepted that the RSA Stage 1 identified the full length of the B1113⁷⁴⁹.
- 8.6.10.4. The Ramblers' Association accepts that the identity of the overseeing authority would not (and moreover should not) affect the outcome of an RSA, however, the Ramblers' Association maintains the reason the overseeing authority should be the Highway Authority (and not Network Rail) is evident from the process that Network Rail and Mott MacDonald have adopted in relation to S69. The approach has been to discount the concerns raised at RSA Stage 1 and when challenged about this, to assert that the concerns relate to an earlier proposal, when they clearly do not. Mr Haunton's evidence was clear that 'significant issues' should be signed off at RSA Stage 1⁷⁵⁰.
- 8.6.10.5. Mr Russell's evidence was clear that 900 mm of 'pedestrian facility' should be provided on the western side of the B1113, however it is far from clear that there is sufficient land available within the highway to deliver this.
- 8.6.10.6. There has been a presumption about the lateral extent of the highway verges on the B1113 and no investigation as to their actual status. The lack of detail in the design freeze plans means that it is not possible to identify from them which verge the alternative route is utilising, nor the extent to which walkers will have to cross the road in order to locate sufficient verge to walk along. Ms Tilbrook's evidence was that overall there was sufficient verge of at least 700 mm but she accepted⁷⁵¹ that there was no continuous verge of 700 mm width. In response to the concerns raised by the RSA commissioned by the County Council and to Mr Russell's concerns Ms Tilbrook maintained that any remaining road safety issues that may be identified at RSA stage 2 would be resolved by agreement with the County Council and that based on Ordnance Survey 1:2500 maps there was sufficient highway verge to accommodate safe pedestrian passage. The Ramblers' Association remains sceptical of this and point to the fact that the Order as currently drafted does not make

⁷⁴⁸ NR/INQ/15 Tab F.

⁷⁴⁹ In XX

⁷⁵⁰ Day 14

⁷⁵¹ In XX

the closure of the S69 crossing conditional upon delivery of an agreed within-highway solution⁷⁵².

- 8.6.10.7. The proposals for Pound Hill are not adequate⁷⁵³. There is a scheme in the public domain that can be delivered in the current extent of the highway (maintainable at public expense). Network Rail will not commit to delivering this. There is disagreement between the County Council and Network Rail as to the origins of water that collects in the highway. Mr Baker contends that Network Rail's infrastructure is at least in part to blame for the 'flooding'. Network Rail disputes this. From the Ramblers' Association's point of view the cause of the 'flooding' and who may be responsible for resolving it is immaterial; there is at the moment an unresolved issue which adds to the inconvenience and unsuitability of the alternative route. The fact remains that, if S69 is closed, pedestrians would have to negotiate Pound Hill in all seasons of the year and would no longer be able to choose to use the footpath across the railway as an alternative when the road 'floods'.
- 8.6.10.8. Even if the 'flooding' issue is satisfactorily resolved, the Ramblers' Association takes the view that the failure to provide a raised separate footway and appropriate traffic controls means that the Pound Hill element is unsafe and inadequate.
- 8.6.10.9. The Ramblers' Association submits that the proposed alternative is ill-thought through and premature and for these reasons respectfully request that this crossing be removed from any made Order.

8.7. **Conclusions**

- 8.7.1. To conclude, having heard the evidence, the Ramblers' Association contends that:
- a) The use of a TWA Order is inappropriate and, or in the alternative, that the purposes of this Order can be achieved through other means (section 13(2) TWA);
 - b) Network Rail has not sufficiently justified the need for the Order as a whole, nor the need for closure of each individual crossing;
 - c) Deemed planning permission should not be granted for the development proposed to be authorised by the Order, because the development conflicts with a number of national and local planning policies;
 - d) The proposed alternative routes on a number of the crossings are not suitable or convenient, most notably a number of the proposed routes are *inter alia*:
 - i. Of significantly increased length;

⁷⁵² The closure is conditional only upon certification of new footpath routes.

⁷⁵³ Mr Russell's evidence in cross examination by Ms Lean.

- ii. Much less scenic, often requiring walkers to walk besides busy, noisy and polluted roads;
- iii. Unsafe; and,
- iv. Less enjoyable to walk.

8.7.2. For all of these reasons, the Ramblers' Association respectfully requests the Inspector to recommend the refusal of this Order.

9. THE CASES FOR OTHER OBJECTORS WHO APPEARED AT THE INQUIRY

The gist of the material points made by other objectors who appeared at the Inquiry in their written and oral submissions were:

9.1. OBJ/23-Suffolk Local Access Forum⁷⁵⁴ (SLAF)

- 9.1.1. Local Access Forums were created under Section 96 of the *Countryside and Rights of Way Act 2000* (CROW) with the purpose of advising other statutory bodies on the improvement of public access to land for the purpose of open air recreation and enjoyment. The *LAF (England) Regulations 2007* extended this to cover issues related to functional and utility access by non-motorised users for travel to work or school.
- 9.1.2. Members of SLAF are appointed by Suffolk County Council and under the regulations are required to maintain a reasonable balance of interests between users of Public Rights of Way (PRoW) and owners and occupiers of access land or land over which PRoW exist. Members appointed to SLAF represent various interests, but do not represent specific groups.
- 9.1.3. SLAF responded to both of Network Rail's consultations and the lack of any response to our objections and suggestions has meant that eleven of our objections are included for consideration at this Inquiry, although SLAF now understands that Network Rail have withdrawn SO5 – Pannington Hall. The main reasons for SLAF objections to the proposed closures and diversions relate to:
 - a) Loss of off-road routes and their replacement with on-road diversions which are often on narrow winding country roads with narrow verges containing drainage grips;
 - b) A substantial increase in the length of the walking route as a result of the proposed alternatives to the crossing closure; and,
 - c) The ongoing maintenance cost to SCC once the alternative routes have been put in place.
- 9.1.4. *The Suffolk Rights of Way Improvement Plan 2006 – 2016 "In Step with Suffolk"* (RoWIP) was based on six objectives which included:

⁷⁵⁴ OBJ/23/W1/1.

- a) Provide a better signed, maintained and accessible network;
- b) Provide and protect a more continuous network that provides for the requirements of all users;
- c) Develop a safer network; and,
- d) Improve promotion, understanding and use of the network.

9.1.5. The SCC RoWIP is currently being reviewed and SLAF has had input into the revision. With the demand for new housing in Suffolk being reflected in Local Plans and planning applications for housing at many settlements along the rail corridors in the county, the need is to enhance people's access to the countryside, not restrict it so it can be used not only for recreation but as a route to schools and community facilities. The use of public rights of way are also a key element of the health and wellbeing agenda. SLAF feels that Network Rail's proposals do not reflect these needs.

9.1.6. The Department for Transport publication '*A Guide to TWA Proceedings*' states that where alternatives are proposed where a right of way is to be stopped up then 'the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users'.

9.1.7. Where SLAF opposes the proposed closures, its reasons include:

- a) The proposed diversions do not add to the enjoyment of the countryside by walking long distances alongside a railway track;
- b) The alternative routes frequently involve a vehicular bridge on a narrow road with minimal verges and sight lines;
- c) Alternative routes may involve structures that could pose issues for families with children in buggies and those with mobility issues; and,
- d) The use by Network Rail of a TWA process means that it has bypassed the normal rights of way diversion procedures, which allow wider public consultation and site visits.

The proposed crossing closures that SLAF raised issues with during the consultation process are reiterated here but it should be noted that some were not objecting to the closure itself but contained suggestions for mitigating the impact. There has been no feedback from Network Rail to these suggestions.

9.1.8. **S01 – Brantham Sea Wall**

9.1.8.1. Whilst the proposed route is acceptable, SLAF would like to see the river path remain open as it is well used by local birdwatchers.

9.1.9. **S02 – Brantham High Bridge**

9.1.9.1. No explanation has been given for the change of route east of the railway line which now appears to use a private road and field margins.

Has its impact on landowners been assessed? SLAF does support the linking footpath proposed alongside the A137 to Brantham Bridge.

9.1.10. **S04 – Island**

9.1.10.1. SLAF does not object to the deletion of the alternative footpath on the south side of the Capel St Mary Road but still feel that the narrowness of the road bridge for pedestrian use has still not been addressed.

9.1.11. **S12 – Gooderhams**

9.1.11.1. The possibility that the existing stiles should be replaced by kissing gates at the Cow Creek crossing should be considered given that Fords Green and Bacton are also being closed, which could lead to greater use of that crossing.

9.1.12. **S13 – Fords Green and S69 – Bacton**

9.1.12.1. These two proposals should be considered together. Although some attempt has been made to reduce the use of the B1113 for pedestrians, SLAF considers it is essential that a proper footway is established along Broad Road for safety reasons.

9.1.13. **S22 – Weatherby**

9.1.13.1. From Network Rail's survey, this is obviously a very well-used crossing, even if it is not a public right of way. SLAF considers that the suggested alternative route alongside a busy road and using a narrow under bridge is not acceptable. Also, the suggested use of 2 metre high steel palisade fencing to stop trespass once the crossing is closed would be a visual intrusion.

9.1.14. **S23 – Higham**

9.1.14.1. The suggested diversion uses existing roads with inadequate verges. To reduce safety concerns SLAF suggests that the possibility of putting a field edge path behind the group of houses by the war memorial should be investigated.

9.1.15. **S25 – Cattishall**

9.1.15.1. SLAF has consistently commented that the crossing should remain until a developer funded footbridge is in place and the underpass opened.

9.1.16. **S27 – Barrell's and S28 – Grove Farm**

9.1.16.1. These two proposals should be considered together. The alternative routes involve a significant amount of road walking and the moving of the Footpath 005 Thurston from its position on the Definitive Map to alongside the boundary of 'Pheasants' has been done without consulting the landowner.

9.1.17. **S31 – Mutton Hall**

9.1.17.1. The proposal to use the narrow road overbridge near Butts Farm is unacceptable. SLAF has suggested to Network Rail that it would be more

sensible to divert the path south of the railway line westwards and use the underpass on Captains Lane.

9.1.18. **Conclusions**

9.1.18.1. A SLAF sub-committee looked closely at all the suggested closures put forward by Network Rail and it was only after careful consideration that they recommended to a full meeting of the forum that those particular crossing closures set out in these submissions should be included in the objection letter. SLAF was also concerned at the amount of time that the small SCC rights of way team with a limited budget had to put in, in order to respond to the TWA; at the expense of progressing other vital rights of way related work such as the revision of the RoWIP.

9.1.18.2. SLAF would ask that assurances are given by Network Rail at this Inquiry that all costs associated with any extinguishments and diversions accepted by the Secretary of State are fully funded by them to a specification agreed with SCC and a commuted sum provided to allow on-going maintenance in the future.

9.2. **OBJ/32- National Farmers Union (NFU)**

9.2.1. **Introduction**

9.2.1.1. The NFU objects to the provisions of the Order regarding 5 of the crossings, on behalf of the following members:

- a) OBJ/60 - Mr D Caldwell (crossing S03);
- b) OBJ/26 - Messrs E Hudson Baker (crossings S12, S13 and S69);
and,
- c) OBJ/22 - Finbows Bacton 1991 Ltd (crossing S13).

9.2.1.2. The primary concerns and issues of our NFU members are as follows:

- a) Closure of level crossings will compromise access to agricultural land by farm businesses, their employees and contractors. This concern results in part by a lack of clarity and transparency on the impact of these changes on private access;
- b) The economic impact to farm businesses, caused by the proposed closures to the crossings, has currently been completely underestimated;
- c) There are proposals to considerably increase the length of the rights of way network running across agricultural land through the creation, diversion or extinguishment of rights of way. This will have an economic impact on agricultural holdings;
- d) Once a crossing is closed, it is unlikely to be re-opened thus future opportunities for use of land, development and neighbouring property may be restricted;

- e) The NFU believes that other solutions have not been considered before the closure or downgrading of the level crossings, including use of lights, barriers, GPS, tunnels and bridges; and,
 - f) The direct effects of closing and downgrading level crossings, including economic, logistical and safety implications have not been fully considered. Forcing agricultural machinery to take longer routes, often using longer stretches of public road, can have significant impacts on the farm business, their contractors and the rural villages and rural local roads and we believe this has not yet been taken into full consideration.
- 9.2.1.3. Greater consideration needs to be, and should have been, given to farmer and landowner responses to the consultations and to points made in meetings when on site. Only through this full engagement with landowners and other interested parties at an individual or local level can compromise arrangements be made to improve Network Rail's assets, whilst not disadvantaging agricultural businesses and rural communities.
- 9.2.1.4. The NFU believes that due to the lack of meaningful consultation with farmers and landowners and the NFU as a key stakeholder, and the lack of any agreement to proposals by Network Rail this Order should not be granted.
- 9.2.2. **Consultation**
- 9.2.2.1. The NFU submitted a general response to the first consultation carried out by Network Rail and responses were sent on 4 July 2016. The NFU submitted further responses to the second and third round of consultations. Standard response emails were received. They stated: *"your comments have been noted and will be added to the consultation process for consideration"*.
- 9.2.2.2. No response had been received from Network Rail in regard to any of the issues raised in all of the consultations on behalf of the NFU's farming members before the pre-Inquiry meeting for the Essex Order held on 9 August 2017.
- 9.2.2.3. The only written responses to date received from Network Rail are the 8 September 2017 in regard to Essex and Others Order, the 24 October 2017 in regard to Cambridgeshire Order and the 20 December 2017 in regard to the Suffolk Order after the date when it was confirmed an Inquiry would be held, which was in regard to objection letters dated 25 April 2017 and 5 May 2017.
- 9.2.2.4. As stated in the 'A Guide to TWA Procedures', on page 30 paragraph 2.4, it is highlighted that engaging in constructive dialogue during formative stages of a project and being seen to be listening to objections can reduce the size of opposition. There has been no dialogue between Network Rail and the NFU on any of the issues raised in the consultation responses. Further, it is stated in paragraph 2.5 that failure to carry out consultations or take into account issues or concerns raised increases the risk of the TWA application not succeeding. As Network Rail did not

provide any response to the consultations, beyond recognition that they had received our comments, the NFU believes that Network Rail has not taken into account issues or concerns raised.

9.2.3. **Communication**

9.2.3.1. In January and February 2017 calls were received from NFU members stating that Bruton Knowles were carrying out farm meetings again and did not seem to have the details as to what had been discussed at previous meetings with Hamer Associates. New proposals/changes were being proposed and consulted on again in January 2017. There seemed to be very poor communication and this was causing confusion as to whether the process was starting from scratch. It was later confirmed that this was a continuation of the process, but the problem was that nothing was being reported back to our members and changes were being made on plans that had not been consulted on.

9.2.3.2. Despite attempts to hold a further meeting, it was not until after the NFU submitted a Statement of Case, that a meeting was held with Network Rail at their office in Stratford on 21 July 2017. Matters were discussed regarding the issues for particular members, but no response has been received from Network Rail or any attempt to address any of the issues raised.

9.2.3.3. The NFU believes strongly that Network Rail and the agents acting on its behalf have not been constructively engaging with landowners and farmers affected by the proposed level crossings or the NFU representing our affected members. We believe many issues could have been resolved before the creation of a public Inquiry, if there had been full consultation and dialogue between Network Rail and the NFU's members.

9.2.4. **Impacts on agricultural business**

9.2.4.1. The NFU recognises Network Rail's aims to improve safety on the network and increase the quality of service provided to its customers through a higher-speed rail network. However, the NFU's preferred option is for other solutions to be considered before the closure or downgrading of level crossings, which it believes have not been fully considered up until this point. This includes the use of lights, barriers, GPS, tunnels and bridges.

9.2.4.2. The closure or downgrading of level crossings will have differing impacts on agricultural businesses depending upon farm type and size, and the specifics of the proposed closures.

9.2.4.3. The NFU's members' primary concern is to ensure access to their farmland on a safe and timely basis, by their staff or appointed contractors, for agricultural and horticultural operations, and to transport harvested produce. Where livestock is grazed, access to land is required for husbandry purposes. Some of the proposals would lead to very lengthy diversions which would have disproportionate impacts on current farm practices.

- 9.2.4.4. Furthermore, some operations are labour intensive and require considerable numbers of people to gain access to land at particular times of year. Therefore, increasing the distances which have to be travelled to access land can have significant logistical and financial impacts for the farm business.
- 9.2.5. ***Public rights of way***
- 9.2.5.1. The NFU is concerned that a lot of the proposals are to divert footpaths and bridleways on to productive agricultural land, which is privately owned and which at present does not have any public rights of way.
- 9.2.5.2. Some of the proposed diversions for the proposed rights of way are greater in length and therefore are taking a considerable proportion of land out of production.
- 9.2.5.3. As discussions and proposals have progressed from the first consultation to the final set of maps deposited with the Order, some rights of way have been upgraded from a footpath to a bridleway with a wider area of land being needed for the creation of a bridleway. The first some landowners have known about this is when looking at the plans enclosed with the Order.
- 9.2.5.4. Having regard to the test set out in section 5(6) of the TWA, the NFU believes that the following needs to be taken into account when considering whether a footpath should be diverted along and over agricultural land:
- a) Data from the surveys carried out by Network Rail demonstrates very low usage or even no use at all of some footpaths. The word 'required' does not have any special meaning in the TWA, therefore we believe it is necessary to define 'required' through its definition in the Oxford English dictionary as to 'need for a particular purpose'. The TWA does not obligate a new route to be created, if it is not 'required';
 - b) The NFU believes that many of the proposed routes are not required to be diverted across agricultural land as there is already an existing parallel or alternative route available which is not substantially less convenient;
 - c) Many of the proposals for diverted footpaths put forward by Network Rail create circular routes which are not currently in existence. Network Rail only has powers to provide an alternative right of way and by applying for this Order through the TWA should not be improving or upgrading the right of way network; and,
 - d) There are cases where a diverted footpath has been replaced by the creation of a bridleway on the plans submitted with the Order. The TWA does not allow for an upgrade and betterment should not take place.

9.3. **OBJ/60-D Caldwell⁷⁵⁵ (DC)**

9.3.1. ***Introduction***

9.3.1.1. These submissions draw attention to the fact that DC has been placed in such a position by Network Rail that he had no alternative but to make a formal objection to the Order and arrange to be represented in the Inquiry.

9.3.1.2. There are 3 aspects to be considered. First, that Network Rail failed to carry out appropriate and meaningful consultations with DC. Second, that it failed to show that it has given fair and proper consideration to the alternative routes suggested by DC. Had Network Rail not failed on both these issues, an alternative route acceptable to DC, and other parties, could have been found and there would have been no need for participation in the determination of the Order application in respect of S03. Thirdly, to determine that an alternative route is required to enable the closure of S03 and, if so, which is the appropriate alternative route.

9.3.1.3. As well as driving these submissions, the first 2 issues have driven DC's application for costs against Network Rail, which is set out separately.

9.3.2. ***Lack of consultation***

9.3.2.1. DC considers that Network Rail, through its contractors, was negligent in failing to identify the owner of the land affected by its proposals, Eleven Acre Field.

9.3.2.2. Network Rail's failure to consult and engage with DC, the owners of Eleven Acre Field, was contrary to the statement in paragraph 2.1 of the Network Rail Statement of Consultation that it took into account the guidance and procedures in the publication '*A Guide to TWA Procedures*'. Those procedures specifically advise in paragraph 2.2 that '*...the carrying out of wide and thorough consultations in advance of an application is a crucial part of the whole authorisation process...*' and advise in paragraph 2.4 that '*Engaging in constructive dialogue during the formative stages of the project, and being seen to be listening to objections, can significantly reduce the size and strength of opposition*'.

9.3.2.3. Mr Billingsley states⁷⁵⁶ that '*consultation activity (between April and July/August 2016) was undertaken with landowners directly affected by the proposals*'. This is simply untrue in respect of DC. Mr Billingsley argued, when asked why Network Rail did not make an effort to contact DC, that this stage was a 'non-contact' consultation. In fact, the consultation was only 'non-contact' if the land was not registered. No attempts whatsoever were made to make contact. A visit to the area, asking other landowners, contacting the Parish Council, would all have been responsible and easy ways to proceed. DC was clearly disadvantaged as a result; his neighbours negotiated with Network Rail

⁷⁵⁵ OP/INQ/103 and OBJ/60/W1/1 & 2.

⁷⁵⁶ NR/29/1 para 5.11.

during the first round of consultations to their advantage, as the consultation summary makes clear.

9.3.2.4. Mr Billingsley also claims that Network Rail *'...considered all feedback received during the 2 rounds of consultation before the final decision on the diversionary route was made.'*⁷⁵⁷ Yet even after DC took the initiative and contacted Network Rail, it did not engage with him. It was left to him to try and establish contact with Network Rail's agents, Ardent and Bruton Knowles. No meaningful meeting with any member of DC's family took place until December 2017. By that time, of course, the Order route option had been determined and the time for negotiation and influencing the Order application was long gone for DC.

9.3.2.5. It is appropriate to consider how the Network Rail consultation with DC fits with the Gunning Principles. The Gunning Principles are common law principles that apply to all public consultations and established in *R V London Borough of Brent ex parte Gunning [R v Brent London Borough Council, ex p Gunning (1985) 84 LGR 168]*. They include:

2.7.1- Consultation must take place when the proposal is at a formative stage: This principle does not mean that the decision-maker has to consult on all possible options of achieving a particular objective. A decision-maker can consult on a *'preferred option'*, and even a *'decision in principle'*, so long as its mind is genuinely open, *'to have an open mind does not mean an empty mind.'*

2.7.2- The product of consultation must be conscientiously taken into account: If the decision-maker does not properly consider the material produced by the consultation, then it can be accused of having made up its mind; or failing to take into account a relevant consideration.

9.3.2.6. It is hard to see how Network Rail's lack of effort during the consultation complied with these principles in respect of DC. Instead its *'non-contact'* approach to consultation with an owner of non-registered land has led it to promote a route which, of the identified options for an alternative route, would cause the maximum adverse impact on the landowner. This is deplorable and Network Rail should be castigated for its lack of effort and lack of sense of responsibility in respect of the consultation process.

⁷⁵⁷ NR/29/1 para 8.3.2.1.

9.3.3. ***Purpose of the Order***

- 9.3.3.1. The purpose of the Order is to close level crossings and provide alternative public rights of way, if the Secretary of State deems an alternative is required.
- 9.3.3.2. The Secretary of State has the power to make an Order with or without modification of the draft submitted. Those changes could be substantial but would not be appropriate if they were fundamentally different proposals from the ones applied for. DC submits that in this instance amending the Order to propose either of the alternative routes suggested by DC⁷⁵⁸ to the Order route would not be a substantial change in that:
- a) The purpose of the Order would be maintained, enabling S03 to be closed; and,
 - b) Only land within the ownership of the parties already involved would be affected.

9.3.4. ***SoM4***

- 9.3.4.1. 'A Guide to TWA Procedures' sets out that if an alternative is to be provided, it is to be a convenient and suitable replacement for existing users. Suitable and convenient is not a term of art. The words should be given their natural meaning. The submitted paper NR/INQ/26, seeks to give some guidance on how the term 'suitable and convenient' should be interpreted. At paragraph 8 of that paper a number of factors are identified as being 'particularly relevant' (the factors). DC agrees that, with the exception of the enjoyment of the walk, the factors are relevant and should be applied to any suggested alternative route for S03.
- 9.3.4.2. The factors do not include any reference to the impact of the proposed route on the land over which it would pass. However, Network Rail has been at pains to emphasise it recognises that in formulating an alternative route it should have regard to the impact of the route on the affected land and that it wishes, wherever possible, to minimise that impact. In consequence DC considers that the impact on the affected land is a further matter to be taken into account when identifying a suitable and convenient alternative route. The proposed route would result in the loss of productive agricultural land and it would constrain OBJ/60's ability to maintain an adjacent stream.
- 9.3.4.3. Suitability and convenience is also judged on the assumption that any required works have been completed satisfactorily. To this end DC has submitted evidence of feasibility for the creation of both of his proposed alternatives to a satisfactory standard. Network Rail has not produced any evidence to contradict it.
- 9.3.4.4. Network Rail has also not produced any evidence of its own that the Order route can be provided following less works than the alternatives

⁷⁵⁸ OBJ/60-2 tab 5 (OBJ/60/W1/2/BLLP11).

DC has suggested. Ms Tilbrook agreed, when asked if it is possible that more than one route would qualify as 'suitable and convenient'. This is indeed the case with S03:

- a) Alternative route A⁷⁵⁹: This route would provide a direct connection between S03 and Falstaff crossing. It would have a consolidated and free draining surface comprised of ballast chippings, providing a good walking surface in all seasons.

In addition, such a route would have no impact on the land of anyone other than Network Rail. There is clearly and obviously sufficient land for the creation of such a route along the line of waste ballast. It cannot be said that the land in question is currently used for the running of the railway in any operational sense; it is merely a neglected repository for surplus ballast.

The cost of the works would be greater than for the other routes, but no compensation would be payable to DC, and the fact that no detriment is caused to any other landowner should be taken into account.

- b) Alternative route B (round 1 consultation green route)⁷⁶⁰: This is one of three alternatives put forward by Network Rail during the first round of public consultation.

It had, by a significant margin, the greatest public support (58%), it was supported by SCC and no objection was made by the Ramblers' Association. SCC would have raised concerns and objections if it did not think it would be a suitable and convenient alternative or if there were maintenance concerns.

This route is direct, and, subject to the issue of flooding dealt with below, it is submitted that it would be suitable and convenient when the factors are applied.

It would also have a limited impact on DC's land. The only reason that this route was not promoted in the Order is because a section was found to be waterlogged. It is DC's view that the waterlogging is caused by damaged drains on Network Rail land and that the damage was caused by Network Rail during electrification of the line in the 1980s, which should be repaired by Network Rail.

Network Rail has failed to consider the explanation for the waterlogging put forward by DC or to investigate the waterlogging and determine the cause independently or to assess remedial work itself. It is DC's case that the remedy lies within Network Rail's hands, but regardless of the cause of the problem, the cost

⁷⁵⁹ OBJ/60-2 tab 6 (OBJ/60//W1/2/BLLP12 plan 1).

⁷⁶⁰ OBJ/60-2 tab 6 (OBJ/60//W1/2/BLLP12 plan 2.)

of remedial work is likely to be modest, circa £5,000 in the quotation submitted in evidence.

It is relevant to note that, in relation to another route, S01, Network Rail has promoted a route where waterlogging is significantly worse than along DC's route B. In that case, Network Rail has dismissed it as an issue when giving evidence, stating confidently that it is merely a matter to be dealt with by appropriate works. It is submitted that exactly the same is true of S03; waterlogging can be resolved by appropriate drainage works.

- c) The Order route: The diversion proposed by Network Rail is not direct at all and is less suitable and convenient for the public than the other 2 alternatives as:
 - i. It is significantly longer;
 - ii. It reflects no desire line and requires walking counter-intuitively;
 - iii. It may well be prone to flooding, especially as the location of the route next to a watercourse would require a traffic regulation order to temporarily close the route, discouraging frequent future dredging. No assessment of its propensity to flood has been undertaken by Network Rail.
- d) It would also render unproductive a significant area of agricultural land, around 1,200 m². It would therefore, also be the least cost effective route given the compensation payable to the landowner.

9.3.5. ***Impact on the landowner***

9.3.5.1. Of the 3 routes identified, the Order route would have the greatest adverse impact on DC. Network Rail's approach is that this is a matter for compensation. However, it is not the case that every impact can be bought. The financial compensation not only fails to provide a fair and just solution in respect of S03, it would also not be able to provide for future impacts, which, by definition, cannot be assessed at the current time. A public right of way is in perpetuity a burden on a landowner. Imposing the length of the Order route upon DC's land would have an impact beyond the amount of compensation to which he would be entitled. It should only be done after very careful consideration and evaluation of the alternatives; work that Network Rail has not undertaken.

9.3.6. ***OBJ/60 Conclusions***

9.3.6.1. DC considers that Network Rail's claim to wish to work with landowners on agreeing alternative routes is entirely hollow in the context of S03. Its consultation initiative with DC was non-existent.

9.3.6.2. Thereafter, Network Rail did not give proper consideration to the alternative routes put forward by DC. Network Rail has failed to

- substantiate that DC's evidence of the work needed to be done to bring the alternatives to an appropriate standard is unreliable.
- 9.3.6.3. In DC's view there are no legitimate grounds on which it can be concluded that, after works, the 2 alternatives would not be suitable and convenient for users.
- 9.3.6.4. Instead Network Rail has literally opted for the easy way; an alternative that has nil impact on its own property and requires the least works or effort on its part.
- 9.3.6.5. It is submitted by DC that the correct approach is to apply the factors, including the impact on the land, to determine which is the appropriate alternative route. If more than one of the alternatives available are deemed to be, after works, suitable and convenient, then the impact on the land and the landowner's business should be the deciding factor.
- 9.3.6.6. Finally, DC was not given the opportunity to respond to the proposals and engage in meaningful discussions with Network Rail or its contractors; DC had no choice but to object to the Order. This resulted in the need to appoint Birketts LLP, Clarke & Simpson and Mr Les Cotton to advise and act on DC's behalf, which has meant incurring unnecessary costs; the subject of a separate costs application against Network Rail.
- 9.3.6.7. The Secretary of State has the power to modify the Order and delete the proposed alternative route and substitute an alternative. DC requests therefore, in the event that the closure of S03 is found to be justified and that an alternative route is required, the Secretary of State modify the Order to require the provision of DC's submitted alternative A or, as a second preference, his alternative B.
- 9.4. **OBJ/34-G Crosby⁷⁶¹ (GC)**
- 9.4.1. In drafting the order being considered by this Inquiry, Network Rail has set out plans to close many 'at grade' pedestrian crossings in Suffolk and has been quite open that they would seek to close further crossings in years to come. Improving the railway system is something that can benefit both the economy generally and also add to its attraction for many individuals, particularly regular commuters. These are things GC accepts as objectives, but in our democratic culture these are things that have to be balanced with the needs of the residents and visitors that use footpaths as part of their daily life, and for leisure such as exercise, relaxation, escape, or as part of other activities such as bird watching. Closing a crossing is a 'forever' action and so needs to be carefully considered.
- 9.4.2. GC has chosen not to object in principle to the proposal to close S08. Whether there is adequate justification for the closure of this crossing is

⁷⁶¹ OP/INQ/104.

a matter for the Inspector to consider. GC is confident that the absence of incidents at the crossing, and the unobstructed sight line would be taken into account.

- 9.4.3. GC would expect, he thinks reasonably, to feel, and actually to be, as safe when using the relevant footpaths for legitimate purposes after the crossing closure as he does while the crossing is open, and that is where he has the problem. With the proposals as they stand, GC does not feel as safe, and does not believe he is, in fact, as safe following the closure. Network Rail may argue that he would be 'safe enough' (his words) but that is not the test he applies when choosing a walking route. If the result of the closure is an unavoidable increase in the risk he experiences when conveniently using the public rights of way, then he considers that there is something wrong, and something needs to be changed. That is the situation he feels applies in the S08 case.
- 9.4.4. GC uses the crossing every few weeks, sometimes more frequently. He uses it to gain access to the riverside towpath beside the Pipp's Ford Lock where a group of volunteers he is associated with is carrying out restoration of the old navigation, and also to observe the birds on and around the gravel workings. He expects to visit more in the future and so to want to cross the line more frequently as the gravel pit work comes to an end, the re-wilded areas mature and are opened up for public access and as more wildlife is attracted to the area.
- 9.4.5. The area between the railway and the river is a 'destination', separated from the road by the railway. It is not just somewhere to walk through or past on the way to somewhere else. He says he normally chooses to drive to this area. He indicates that there is only one local public car parking area, which is in a layby beside the B1113 near S08, and this is where he parks. The next nearest public parking area is at Needham Lake, some 2 Km away, which is connected along the old towpath, but which involves a hazardous crossing of Coddenham Road. He indicates that it is a nice walk, but a walk he often wishes to avoid due to the time it takes. Sometimes he walks along the towpath from his home, some 3.5 Km away, but mostly he parks in the layby, which is convenient.
- 9.4.6. He indicates that at the moment he feels he is completely safe crossing the railway line. He feels that his safety is for all practical purposes entirely in his own hands, ignoring such diminishingly rare events as derailments and, of course, meteorites.
- 9.4.7. He considers that if the closure is carried out as proposed, then to return to his car from, say, the Lock, he would feel safe walking along the eastern side of the railway line. In fact, it looks like he would, within two or three years, have a choice of the 'new' public footpath created under the Order or a more sinuous permissive path as detailed in restoration plans included as part of the planning permission granted for the gravel workings. Both would be safe and both would feel safe. Sharing the narrow bridge over the railway tracks with heavy lorries is not ideal, but the lorries would leave the site as the gravel workings come to an end within two or three years after which the bridge would carry only the very occasional vehicle and would feel safe. The path from the bridge to

the B1113 is a perfectly sensible footpath and feels safe. However, then, to return to his car, he would need to walk beside the B1113 on the existing footway. For the first hundred or so metres he does not, and would not, feel safe on this footway, it is too narrow, too close to fast traffic and there is nowhere to 'escape'. In fact, he says that he would feel so at risk on this part of the route that he would not use it.

- 9.4.8. GC indicates that this would prevent convenient access for him, and possibly others, by car to the lock and the re-wilded gravel pits.
- 9.4.9. Beyond the narrow section, the footway opens out and is for the most part separated from the carriageway by a grassed area. The footway is wider, it is a fair distance away from the carriageway and there is an area you can step away from the traffic onto if necessary. For GC this feels considerably safer.
- 9.4.10. If the crossing closes, GC says he would have no viable option, convenient or not, other than using this section of narrow footway beside a busy road. GC considers that this road cannot be regarded as 'rural'; it was the main 'A' road between Ipswich and Cambridge before construction of what is now the A14. It carries rather more HGVs than may be expected due to bridge restrictions under the railway and the weight limits in Needham Market. These prevent connection with the A14 or Stowmarket, making this the only access route to Needham's industrial estate, the air base at Wattisham, to Needham itself and to many businesses, farms, towns and villages to the west. The narrow footpath is at a point on this road where the national speed limit applies, is regularly exceeded, and where drivers' attention is likely to be drawn to other road hazards, such as the crest of Gallows hill, the narrowing carriageways, two bus stops, and the near blind turn to and from Darmsden.
- 9.4.11. GC says that his safety would no longer lie virtually solely in his hands, it would be largely in the hands of drivers passing within a metre or less of him.
- 9.4.12. GC indicates that it may be thought that he could cross the B1113, use the road to Darmsden and then return to the B1113 layby by means of the existing public footpaths across the fields. However, in addition to the extra distance and the hill to climb, this means crossing the B1113, twice, once at the Darmsden junction, which is itself a hazardous place to cross this road. GC says he would not do this. It is not convenient, it introduces, for him, two road crossings which he does not want to attempt.
- 9.4.13. GC believes he is correct in saying that S08 is one of only a few crossings within the Order that places pedestrians in such close proximity to a road carrying national speed limit traffic. It may be the only one.
- 9.4.14. At the moment, when GC parks in the B1113 layby and uses S08 to get to the Lock or gravel pit areas, he does not use a path that puts him as close to fast traffic as the section of footway he has described. He does

- not want to be walking close to fast traffic, particularly with his back to oncoming vehicles.
- 9.4.15. In the course of the Inquiry, Network Rail has argued that the footway beside the B1113 has been checked by the independent audit team who have said that no problems were identified, but it is not clear, at least to GC, what metrics were used as the basis for this assessment.
- 9.4.16. There has been discussion and debate about 'standards' for footways carrying pedestrians beside a national speed limit road. Network Rail argue that there are none and seem to assert that as this is the case an existing footway built probably 50 years (GC's estimate as the current A14 was built in the early 70s) ago can be used. GC's view is that guidance on the current 'best practice' for keeping pedestrians safe when beside fast moving traffic such as can be found in the *Design Manual for Roads and Bridges*⁷⁶² or the *Street Works Regulations*⁷⁶³ should apply. Both are very similar in their guidance, both requiring a significant separation between a path used by pedestrians and the edge of the carriageway. Network Rail appear to dismiss these sources. GC thinks it is worth mentioning that where there is a grassed separation strip between the footway and the carriageway beside the B1113, he feels far safer. Not completely safe, but far safer, and in his view adequately safe.
- 9.4.17. In its own realm, Network Rail has to meet standards keeping people standing and walking on platforms away from fast moving trains, marking the danger area with a 'yellow line' behind which space has to be provided for pedestrians to stand when trains pass. Network Rail responded to this observation by citing an example of a station where this standard was not met. GC recognises that a railway system as old as ours, with its fascinating history, would always have examples where modern standards are not met, and cannot be met, but these would be the exceptions. He says he trusts that the Inspector will consider whether Network Rail's example of an exception to the width of the danger zone at a station is a rare case or whether it is rather more of the norm.
- 9.4.18. Network Rail even has a standard for the separation between the pedestrian 'stop' point at crossings such as S08 and running trains, designed to keep pedestrians adequately clear of fast moving trains. Trains, of course, have a large 'suction' effect from the mass of air they have to displace, but so do large lorries travelling at 50 mph. Not as great, but enough to disturb someone's balance potentially causing them to stumble into the path of a following vehicle.
- 9.4.19. The narrow section of footpath beside the B1113 cannot provide a pedestrian with a similar level of separation from fast moving vehicles, vehicles which, of course, unlike trains, are not constrained to tracks and can swerve.

⁷⁶² OP/INQ/93.

⁷⁶³ OP/INQ/29.

- 9.4.20. GC says that, frankly, he would have hoped a body with the safety focus of Network Rail would always seek out the best and safest practice when their actions affect public safety, but it seems to him that he is being rather over optimistic.
- 9.4.21. Network Rail prefers to rely on guidance given in the Inclusive Mobility document, guidance which as far as GC can see applies to environments inside and around buildings, and on built up streets, and not intended for the environment beside fast roads. The guidance may show the minimum width that allows a person to pass unimpeded but makes no mention of a safety zone between the person and fast moving traffic. Interestingly that guidance does suggest 'physical segregation' between pedestrians and cyclists where their paths run beside each other, but as far as GC has been able to see is silent on any discussion of pedestrians close to high speed traffic. GC indicates that, personally, he would rather be hit by a cyclist than an HGV.
- 9.4.22. In GC's view, greater weight should be given to more relevant documents such as the *Design Manual for Roads and Bridges*, the *Streetworks Regulations* and the Railways standards for platforms and crossings when looking at putting pedestrians in close proximity to traffic moving at 60 mph and more. These documents and standards may not directly apply to the B1113 footway situation, but the safety considerations that drive the standards are the very same issues that he says he would face, fast vehicles close to pedestrians in a limited space. The assessment of any footway beside such traffic needs to take into account that this is a new use of the footway, someone walking along the road for whatever reason may have a different set of expectations to someone that is used to walking on a path away from any threat of injury from traffic but has been diverted as a result of a crossing closure.
- 9.4.23. GC suggests that in the absence of standards for the minimum width of footways beside national speed limit roads, it is interesting to ponder how the path beside the B1113 has been reviewed as having no problems. What was this route being assessed against? The answer seems to be that the footway was safe when it was built so it remains safe today.
- 9.4.24. The independent audit team declared that no problems were identified and explained:
- 'This is because it utilises an existing footway that pedestrians would already be walking along, an existing footpath and provides a new off-carriageway footpath.'* (NR/INQ/64)
- 9.4.25. GC says he would not be walking along this footway. When this footway was built he did not need to walk along it, and until this Order was published, he had not walked along it in the 40 years he has lived in the area. He considers that the closure of S08 as proposed in the Order would leave him no viable, convenient option but to use the footway. The path may not be new, but he would be a new path user and he suggests his needs should be considered when looking at the future of

crossing S08, particularly as the closure is proceeding on safety grounds.

Alternative diversion routes

- 9.4.26. GC indicates that he is not seeking to resist the closure of S08. There are obvious options to enable people like him that use the crossing to move between the B1113 layby and the lock, river and re-wilded area away from the narrow section of B1113 footway. For him the most obvious is to use the existing haulage track to the west of the railway, or to walk beside it. There are gravel lorries using the track at the moment, but their use would come to an end in the next two or three years. They are in any case slow, and noisy, and are highly unlikely to encounter other road vehicles, or cyclists, or deer, or any of a number of typical hazards causing them to swerve unexpectedly. Visibility is good, and there is room for pedestrians to "escape" by stepping aside if needed. But there are other options for safer routes open to Network Rail on the west side of the rails to carry pedestrians back to the existing footpath. GC would go further, and suggests Network Rail consider delaying the closure until the gravel workings have been reinstated, and the haulage traffic has ended, and then use the permissive path to the east and the track to the west of the railway to save on construction costs etc.

Conclusions

- 9.4.27. It is now a matter for the Inspector to consider the justification for the closure, and to consider the convenience and suitability of the proposals for footpath and crossing users like me.
- 9.4.28. GC says he awaits the outcome with interest but he is perfectly clear that should the proposal go ahead unchanged, he would not be using the narrow section of footway beside the B1113. The effect is he would no longer access the river or re-wilded area from the B1113. He says he would no longer be able to use the right he currently has and the right he currently enjoys to get to the river side of the railway conveniently and safely from the B1113 layby. However, if changes were made to the proposal and a convenient path that avoided the narrow B1113 footway were to be provided he could continue to enjoy the rights he currently uses to visit the places he wants to visit.

- 9.5. **OBJ/26-Messrs E Hudson Baker, MA Baker & PE Baker⁷⁶⁴** (MB)
- 9.5.1. MB object to the proposals for crossings S13 – Fords Green and S69 – Bacton.⁷⁶⁵
- Consultation*
- 9.5.2. MB consider that the proposed process of allowing approval before the detailed design stage is completed has caused or allowed the incomplete investigation of the impacts of the proposed closures and their alternative routes. The Inspector at the early stages of the Inquiry asked Network Rail to confirm that they were satisfied that all affected parties were included in NR09- Book of Reference. MB are not convinced this is the case particularly considering the evidence they have read and heard for the Bacton crossings that they have a direct interest in. They believe stakeholders have failed to lodge objections in the correct timeframe as they were blinded by junk mail scale multiple notices. The details of correct objection procedure are lost in the sheer volume of information.
- 9.5.3. Where stakeholders have engaged in the process and clarification has been sort, Network Rail has appeared unwilling or unable to answer any queries to the impact of their proposals.
- 9.5.4. Incorrect information has been passed to stakeholders. Network Rail acknowledging during the crossing specific evidence for the Bacton Crossings S12, S13 and S69 that GEN-04 design freeze maps should not have been distributed to stakeholders and as a result any time and resources spent relying on these was wasted.
- 9.5.5. Mr Billingsley and Ms Tilbrook have also acknowledged in their evidence no joint site meetings with stakeholders were held, even though requested, nor had the alternative routes been fully surveyed for the Bacton crossings.
- 9.5.6. MB consider that stakeholders have been kept at arm’s length making objections and the Inquiry inevitable with its costs borne by stakeholders and the public purse alike. It would have been sensible to engage in detail design and site meetings with stakeholders to enable the Order to be considered with minimal objections.
- The Inquiry process*
- 9.5.7. MB would like to thank the Inspector for his ability to interpret the intention of their contribution to the Inquiry, especially when their evidence or cross examination has not been instantly clear.
- 9.5.8. MB and other stakeholders have tried to engage constructively with Network Rail to clarify the actions and impact of the Order. It is difficult to identify if Network Rail has been unreasonable with the lack of detail in the information that it has supplied to stakeholders or that it is just to the limitation required at this stage in the process.

⁷⁶⁴ OP/INQ/102.

⁷⁶⁵ Objection to S12 – Gooderhams withdrawn, see OP/INQ/34.

- 9.5.9. It has not been MB's intention to have increased the time required for this Inquiry by submitting late evidence such as OP/INQ/49 and OP/INQ/65 but on hearing Network Rail's inaccuracies in evidence in what MB would have expected to have been completed or included as due diligence, it has fallen on MB and Inquiry time to correct this.
- 9.5.10. MB believe it was unreasonable for Network Rail not to have identified earlier that incorrect information was provided to stakeholders such as the GEN-04 design freeze maps for the Bacton crossings.
- 9.5.11. MB are concerned that Stakeholders are still exposed to further costs trying to engage in the detail design stage assuming we are even consulted. Who is our recourse with for resultant Highway and access issues; Suffolk County Council Highways or Network Rail? What is the process?
- Proposed new field edge footpath between S13 and Cow Creek level crossing*
- 9.5.12. The proposals include the provision of a new field edge footpath along the western side of the railway between S13 and Cow Creek level crossing. It is not necessary, as other neighbouring sections of the existing PRow network would make adequate provision for users, including a circular walking route to the west. Furthermore, as a result of the proposed new route, the associated field would be encircled by footpaths. This would increase the bio-security risk to the farming enterprise from neosporosis carried by dogs, allowed to roam by dog walkers. The likely contamination pathway being dog faeces on the forage crop being fed to livestock. Whilst MB seek to mitigate such risks, by leaving an uncultivated margin between the crop and a footpath, the risk remains.
- Proposed new footpath route from Pretyman Avenue to Footpath 014 Bacton (P073-P071)*
- 9.5.13. The proposed new footpath route from Pretyman Avenue to Footpath 014 Bacton is not necessary. There is an existing footway from the entrance to Pretyman Avenue, westwards to the northern end of Footpath 014 Bacton⁷⁶⁶. Furthermore, the proposed footbridge shown on Order sheet 21 work 3 area⁷⁶⁷ would be likely to restrict the access needed for large farm vehicles along the track immediately to the east⁷⁶⁸.

⁷⁶⁶ Order sheet 21 S69-Bacton Level Crossing.

⁷⁶⁷ Order sheet 21 S69-Bacton Level Crossing work 3 area inset A.

⁷⁶⁸ OBJ/26/2

OBJ/26 proposed alternative for S13 and S69

- 9.5.14. MB again commend to the Inspector and Secretary of State their alternative proposal as outlined in Mr Baker's Proof of Evidence (with further detail OP/INQ/57), which is supported by multiple stakeholders. They also contest Network Rail's submission that my proposed diversion of footpath 20 does not satisfy the conditions set out in paragraph 3.48 of the Guide to TWA Procedures, for the following reasons:
- a) The acquisition or right is not compulsory acquired. It is being proposed and supported by the statutory objector parties that are impacted by the proposal;
 - b) The essential nature is not substantially different. It is still closing crossing S13 and offering a suitable and convenient diversion route that had been in the large proposed by Network Rail in their consultations and GEN-04 design freeze and is supported by other stakeholders as evidenced during the Inquiry
 - c) Network Rail has not identified any other parties that would be prejudiced by the suggested amendments.

Conclusions

- 9.5.15. MB can fully understand Network Rail's desire to close level crossings as our business is similarly impacted by the network of pre-Victorian public rights of way. Yes, the Order proposals would reduce Network Rail's risk, cost and increase its resilience. But at the same time, it would have an inverse effect on us and other stakeholders, increasing our risk and cost while reducing our resilience. With this in mind, MB request that the Inspector and the Secretary of State after him looks favourably on their stakeholder supported proposal with known impact, rather than approving the Draft Order proposals as they stand that would have many still to be fully clarified impacts.

9.6. **OBJ/03-Newmarket Town Council⁷⁶⁹ (NTC)**

- 9.6.1. NTC objects to the proposed closure of S22 and speaks for the Town on this matter. 50+ letters and emails have been received opposing the proposed closure, as well as a petition of over 300 people.
- 9.6.2. With such a huge change, involving closing a route used by around 400 people a day, consultation of the travelling public is essential. In this case, the consultation event was remote from Newmarket, in Bury St Edmunds. Of those who did attend, 97% disagreed with the proposed closure and the concerns raised included the length and steepness of the alternative route and the dangers of walking alongside a busy road.
- 9.6.3. NTC considers that it is not clear from Network Rail's submissions, why the crossing needs to be closed. Whilst it is acknowledged that the

⁷⁶⁹ OP/INQ/105, OBJ/3/W1 &W2.

east/west route from Felixstowe to Ipswich is an important freight route, that traffic does not pass through Newmarket, nor is it likely to in the future given the physical constraints of a single track and the tunnel to the east, which would take major works over many years to address.

- 9.6.4. Network Rail's survey demonstrates, with an average usage of around 400 people per day, what a busy crossing S22 is. It is a vital means of communication between the 2 parts of the Town. Short-comings of the survey include: the lack of origin and destination data collected; and, that it was undertaken outside the football season, during which many spectators reach the football ground using the crossing.
- 9.6.5. NTC considers that visibility at the crossing, at around 100 metres, is adequate, given the line speed limit of 40 mph. Whilst Network Rail's rating system scores the crossing as D2, indicating a high risk, this results from the high number of people using the crossing rather than accident frequency. Safety data indicates that between March 2006 and November 2016 there were 6 near misses. For the Inquiry Network Rail published new data, which identified 4 incidents in 2017. Even adding these, it amounts on average to around only 1 per year at a crossing used around 120,000 times a year.
- 9.6.6. As well as people travelling to/from work, users of the crossing include: parents with children and buggies; school age children who are often unaccompanied; residents going shopping; cyclists; as well as people traveling to the football ground and allotments on Cricket Field Road. NTC says the alternative route proposed is approximately 850 metres longer, much of which includes a gradient and is alongside a dangerous busy road. Many of the letters of objection sent to NTC are from elderly people, who indicate that they would not be able to cope with the proposed diversion. It would leave them isolated, not least as there are no buses for that journey and taxis are expensive. Cyclists, rather than travelling through residential streets as they do now, would have to use a busy main road with associated dangers.
- 9.6.7. The proposal would result in increased use of cars, social exclusion of hundreds of residents and endanger school children, all contrary to the aims of the National Planning Policy Framework.
- 9.7. **OBJ/18-Newmarket Ladies Open Door Group⁷⁷⁰ (NLODG)**
- 9.7.1. NLODG objects to the proposed closure of S22, as it is a much needed pedestrian rail crossing for Newmarket people to access: the Town; shops; schools; allotments; and football matches. Network Rail's own survey indicates that it is used by up to 500 people per day.
- 9.7.2. There has never been an accident at the crossing, where there is a single track and the view both ways is very clear. Furthermore, trains are relatively slow as the station is nearby.

⁷⁷⁰ OBJ/18 Statement of Case.

- 9.8. **OBJ/19-P Collins⁷⁷¹** (PC)
- 9.8.1. PC has used the crossing safely for over 50 years. At one time, there were 2 main lines in use as well as a marshalling yard and sidings. Now there is only one track to cross. There is good visibility in both directions and the crossing is perfectly safe.
- 9.8.2. Network Rail says that it is dangerous, due to the large number of users. However, the large number of users is a reason to keep the crossing open, a matter supported by the large number of objections to the proposed closure. It is a vital route for the elderly, middle aged, young people and parents with toddlers, not just for shopping, but also to access other facilities such as schools and doctor's surgeries. The proposed alternative route would be circuitous, adding greatly to the journey time in to the Town centre by residents who live on the other side of the track.
- 9.9. **OBJ/16-M Smy⁷⁷²** (MS)
- 9.9.1. MS considers that Network Rail's proposed closure of S22 should be rejected.
- 9.9.2. The crossing is an important link between a growing residential area and the principal shopping area of Newmarket, a position that appears not to have been taken into account by Network Rail. Network Rail's own survey showed that 405 pedestrians used the crossing on a Monday and an average of 506 over the weekend. It is not therefore some minor rural crossing, the closure of which would have a minimal impact. Furthermore, it links a major car park to the local football/sports ground, so the numbers would be dwarfed if the survey had been undertaken on the day of a popular fixture.
- 9.9.3. What is the point of Network Rail's public consultation, if it then ignores the results? According to its own statistics, 97% of respondents disagreed with the proposal. In MS's view, attendance at its presentation events would have been significantly greater if Network Rail had held one in Newmarket, instead of Bury St Edmunds, around 13 miles away. Furthermore, it failed to send a representative to a public meeting of the residents with local MP, Mathew Hancock, which was held at the crossing.
- 9.9.4. Turning to safety. According to Network Rail's risk model (ALCRM) the crossing has a score of D2, which it considers to be high risk. In its submissions it cites that there have been 6 near misses between 2006 and 2016, and 1 fatality in 2015. However, the latter was a suicide. MS says, considering the number of people who use the crossing on a

⁷⁷¹ OBJ/19 Statement of Case.

⁷⁷² OBJ/16, OP/INQ/8, 75, 88.

daily basis, the number of near misses is not a surprise, bearing in mind there are no visual or audio warning aids currently installed. Also, visibility in both directions is good and, although Network Rail says that the line speed is 40 mph, trains are actually travelling a lot slower, as they are either approaching or leaving the nearby Newmarket Station, which may have prompted some pedestrians to cross the line within sight of the train thereby triggering a near miss report. Older locals find Network Rail's new found concern for safety over a single track laughable, as in the past they had to negotiate 2 main lines and 7 sidings at a time when trains were more frequent and the sidings in active use.

- 9.9.5. Furthermore, the Health & Safety Laboratory in their report '*Review of Network Rail's All Level Crossing Risk Model (ALCRM)*'⁷⁷³ to the ORR highlighted, amongst other things, that it adds value in a number of respects, such as aiding consistency in the management of risk at level crossings, especially in terms of prioritising effort. However, it should be used as '*one input to a wider risk assessment*' and, that the model had '*a number of limitations*', such as it '*was particularly sensitive to the number of users and number of trains and less sensitive to other local crossing factors*'. The limitations of ALCRM are recognised by the ORR in NR14, Paragraph 24, where it calls upon Network Rail to incorporate '*narrative risk assessment*' into the process to identify better controls that can reduce risk further.
- 9.9.6. Mention is made in Network Rail's submissions that there is no registered public right of way at the crossing. However, in MS's view there should be.
- 9.9.7. As to the benefits of closure claimed by Network Rail, MS observes that:
- a) No improvements are being offered to the safety of level crossing users, just closure;
 - b) Keeping S22 open would not adversely affect the efficiency or reliability of the railway, as trains have to travel slowly at this point, for a number of other reasons, including the proximity of the station;
 - c) Ongoing operating and maintenance costs associated with the crossing are likely to be minimal; and,
 - d) Closure of the crossing would increase journey times experienced by pedestrians, due to the lengthy proposed detour.
- 9.9.8. According to Network Rail figures, the alternative route would add an extra 870 metres to the distance a pedestrian has to take from Willow Crescent to the opposite side of the crossing in Granary Road; that is 0.54 of a mile. Bearing in mind that users would be making a two-way trip to the town centre, it would add over an extra mile to their journey. Then consider parents escorting children to and from school; they will

⁷⁷³ OP/INQ/08 (RSU/08/16).

have an extra two miles to cover a day. So, whilst Network Rail may consider the proposed alternative route to be suitable, MS considers that it would not be convenient for local residents.

9.9.9. Furthermore, the proposed alternative route along New Cheveley Road includes an underpass, beneath the railway, where ponding occurs during heavy rainfall. Whilst the footway there is raised above road level and enclosed by safety railings, pedestrians may still be affected by the side wash from passing vehicles. If the proposal proceeds, pedestrians would have to brave that hazard or take an even more circuitous route.

9.10. **OBJ/84-R Wood⁷⁷⁴** (RW)

9.10.1. **Introduction**

9.10.1.1. RW is a governor at All Saints' CEVA Primary School and a trustee of All Saints Under Fives Preschool. She is representing people connected with these two organisations and members of the wider community they serve. She has consulted widely and 45 people completed questionnaires⁷⁷⁵. They object to the proposed closure of S22, with reference to:

- a) Network Rail's analysis of the risk posed to users of the crossing and the creation or increase of risk which would arise from its closure; and,
- b) Damage to the connectivity of the town, both physical and social.

9.10.2. **Comparative risk**

9.10.2.1. Network Rail refer to 8 near-misses at the Weatherby Crossing since 2006⁷⁷⁶, but it is instructive to compare S22 with what a school governor calls the "dangerously busy area" outside All Saints' School⁷⁷⁷, where children going to and from school face⁷⁷⁸:

- a) On-street parking, blocking views;
- b) Busy junctions used by cars, pedestrians and horses;
- c) Unpredictable traffic, congestion and dangerous driving;

⁷⁷⁴ OBJ/84/-1.

⁷⁷⁵ Included scans of all completed Comment Forms (CF 1-26) in Appendix 1.2 and Questionnaires (Q 1- 19) in Appendix 1.3. Q19 is completed by the Joint Site Manager of New Cheveley Road Allotment Site on behalf of 100 members. The early questionnaires did not include a declaration that the respondent authorised me to give evidence at Inquiry on their behalf, so I have also included Declaration sheets (D 1-4), so that those who had completed questionnaires could make such a declaration. These contain 32 signatures, but 7 of these had also signed on a Comment Form, leaving just 25 new signatures. 10 of these did not make any written comment. 4 people filled in questionnaires but did not sign a declaration – I have not quoted from these in my proof. Therefore, in total, 51 signed a declaration (of these 26+15=41 made a written comment and 10 did not).

⁷⁷⁶ NR26, p. 82.

⁷⁷⁷ See OBJ/84-2 Appendix 1.2, CF11.

⁷⁷⁸ See OBJ/84-2 Appendix 2.4, Photographic evidence from outside All Saints' School.

d) The need to cross roads.

There have been at least 4 near-misses since January 2016.⁷⁷⁹

9.10.2.2. By contrast, S22 has⁷⁸⁰:

a) A long, clear view in both directions;

b) No junctions;

c) Only one train at any one time, doing no more than 40 mph; and,

d) A single crossing point and a clear process to follow in order to cross safely.

9.10.2.3. Users clearly consider S22 to be safer.

9.10.3. **Creation of new risk on the railway**

9.10.3.1. Network Rail passes over the risk of people crossing the track illegally⁷⁸¹. RW agrees with the implication that this risk is not currently serious. However, like others⁷⁸², she is extremely concerned that if S22 is closed, the temptation to climb the fencing and cross illegally and dangerously may prove irresistible to some, especially older children who currently use the crossing as a short-cut. Therefore, closing the crossing would inadvertently be creating a new risk.

9.10.4. **Shifting risk from rail to road**

9.10.4.1. Many respondents indicate that if they could not use S22, they would drive⁷⁸³. Congestion hotspots (e.g. All Saints' School, the Town Football Ground, and routes into the Town Centre) would have to cope with even more cars, raising the risk of accidents. Closing the crossing would not remove risk for residents, it would simply relocate it, and magnify existing risk. The School Office Manager takes the view that increased car use would be '*disastrous to an already very congested area*'⁷⁸⁴.

⁷⁷⁹ See OBJ/84-2 Appendix 2.1, Statement from Melanie Pettitt regarding near-misses at All Saints' School.

⁷⁸⁰ See OBJ/84-2 Appendix, Photographic evidence from Weatherby Crossing.

⁷⁸¹ NR26, pp. 82-84.

⁷⁸² See OBJ/84-2 Appendix 1.2, CF14 and CF25.

⁷⁸³ See OBJ/84-2 Appendix 1.1, Spreadsheet Col "More car journeys".

⁷⁸⁴ See OBJ/84-2 Appendix 1.2, CF3

9.10.5. **Connectivity**

- 9.10.5.1. The Weatherby Crossing is considered an integral part of a key route through the town, which is reflected in the 2013 findings of the Prince's Foundation, that '*Newmarket should seek to transform itself into a genuine walkable town*'⁷⁸⁵ and that walkable links should be developed around a primary route running from the Yellow Brick Road to Cricket Field Road, via the Weatherby Crossing⁷⁸⁶. It seems inconceivable that, rather than developing this walkable network, we are now contemplating severing its primary route.
- 9.10.5.2. Network Rail's own 2013 data places the Weatherby Crossing as the third most used of 2,331 crossings surveyed, with 400 uses over 24 hours⁷⁸⁷, matching the most recent figures⁷⁸⁸. Local people are very conscious of how frequently the crossing is used, and how many would be affected if it was closed⁷⁸⁹.
- 9.10.5.3. RW indicates that many respondents said the alternative route would require people to walk further and for a longer time, at considerable inconvenience⁷⁹⁰. This is no trivial matter: parents with several small children may walk to and fro three times a day to drop off and pick up from both nursery and school; 6x10 minutes is one whole hour extra walking. One respondent (a parent) takes 5 minutes to walk to school via the Weatherby Crossing, using the alternative route takes 15-20 minutes⁷⁹¹. Conversely, Newmarket Academy students who live south of the railway are already faced with a 30-minute walk twice a day. If the crossing was closed, they would be walking for 40 minutes each way.
- 9.10.5.4. 70% of respondents specified that closing the Weatherby Crossing would restrict access to key facilities, including:
- a) All Saints' School, All Saints Under Fives Preschool and Newmarket Academy;
 - b) The Town Football Ground, New Cheveley Road Allotments, New Cheveley Road Playground and shop, and All Saints Church;
 - c) The Town Centre; and,
 - d) Places of work, local businesses and organisations⁷⁹².
- 9.10.5.5. Closing the Weatherby Crossing would be detrimental to a close-knit community. Many have family or friends across the railway. One respondent takes 15 minutes to walk to her sister's house, but if the

⁷⁸⁵ See OBJ/84-2 Appendix 2.2a, Enquiry By Design.

⁷⁸⁶ See OBJ/84-2 Appendix 2.2b, Enquiry By Design Map

⁷⁸⁷ See OBJ/84-2 Appendix 2.3, Network Rail "level crossing census input". This spreadsheet was issued in 2014.

⁷⁸⁸ NR26, pp. 82-3.

⁷⁸⁹ See OBJ/84-2 Appendix 1.1, Spreadsheet Col "Strategic importance"/"Used often/ by many".

⁷⁹⁰ See OBJ/84-2 Appendix 1.1, Spreadsheet Col "Loss leads to inefficient movement".

⁷⁹¹ See OBJ/84-2 Appendix 1.3, Q6

⁷⁹² See OBJ/84-2 Appendix 1.1, Spreadsheet Col "Loss makes it harder to access:".

crossing was closed she would take 25 minutes⁷⁹³, isolating her and others like her. Similarly, it would be harder for parents and children to pop in to see grandparents, eroding relationships between generations⁷⁹⁴.

9.10.5.6. More generally, S22 *'helps to keep the community together'*⁷⁹⁵. In fact, the crossing is so well-used that it is difficult to use it without meeting others. A connected community is a strong community.

9.10.6. ***Health and well-being***

9.10.6.1. RW considers that not only does the Weatherby Crossing encourage exercise, e.g. running or cycling⁷⁹⁶, it also contributes to public health by offering a short-cut which is more convenient than driving. People are less inclined to walk the replacement route because they know this route would be much quicker by car.

9.10.6.2. A further health benefit of the crossing is that it allows easy access to community resources which encourage physical activity for all age groups⁷⁹⁷, e.g. the New Cheveley Road Playground, the Town Football Ground and New Cheveley Road Allotments, whose joint site manager explains that many of the 100 members who would be affected by closing the crossing are *'retired or elderly, this is their hobby, pastime and a means of keeping fit'*⁷⁹⁸.

9.10.6.3. Superficially, the longer replacement route may seem advantageous in that it would compel people to exercise more, but on discussing this, it is clear that those with cars would drive⁷⁹⁹ (consequently losing this opportunity for exercise entirely), while those who do not drive would suffer. In particular, this would affect the very young, the elderly and infirm. For some residents the extra distance would entail actual physical pain⁸⁰⁰.

9.10.7. ***Heritage and sense of place***

9.10.7.1. The Weatherby Crossing is part of Newmarket's history; using it gives a sense of connection with the past, not only with those known to us who used it over past decades⁸⁰¹, but also reaching much further back: the route has been used for centuries and is recorded on Chapman's map of

⁷⁹³ See OBJ/84-2 Appendix 1.2, CF21

⁷⁹⁴ See OBJ/84-2 Appendix 1.3, Q9, Q14, Q15

⁷⁹⁵ See OBJ/84-2 Appendix 1.2, CF6 and Appendix 1.3, Q14.

⁷⁹⁶ See OBJ/84-2 Appendix 1.1, Spreadsheet Col "Physical and Mental Health"/"Enables/ encourages exercise".

⁷⁹⁷ See OBJ/84-2 Appendix 1.1, Spreadsheet Col "Physical and Mental Health" "Access to Football ground/ allotments/ play-grounds/ churches" (omit Q13, as this respondent indicated church).

⁷⁹⁸ See OBJ/84-2 Appendix 1.3, Q19

⁷⁹⁹ See OBJ/84-2 Appendix 1.1 Spreadsheet Col "More car journeys".

⁸⁰⁰ See OBJ/84-2 Appendix 1.3, Q13 .

⁸⁰¹ See OBJ/84-2 Appendix 1.2, CF1, CF9

1787⁸⁰². This continuity is reassuring; the sense of walking straight into the historic heart of the town is uplifting.

9.10.7.2. Even those who do not currently use the Weatherby Crossing wish it to be retained, because they know it is particularly useful at certain stages in life (e.g. secondary school, parenthood, retirement)⁸⁰³. They wish it to be available to themselves, their children and others in the future.

9.10.8. ***Finding a solution***

9.10.8.1. For around 150 years the people of Newmarket have benefitted from the access afforded by the Weatherby Crossing. RW says they judge it to be a safe, convenient way to cross our town and we enjoy using it. They most definitely do not want to lose it, but we would be prepared to work with Network Rail to develop a solution which maintains this access in a way appropriate for this century. One economically viable possibility is to install a warning system at the crossing⁸⁰⁴. Alternatively, many support the idea of a bridge⁸⁰⁵; if this were agreed, RW thinks all parties should work together to create a '*well-designed bridge*' to improve both railway and town, and be an '*attractive feature*', inspiring future generations.⁸⁰⁶

9.11. **OBJ/13-P Hodson⁸⁰⁷ (PH)**

9.11.1. ***Introduction***

9.11.1.1. PH considers that S22 should be removed from the Order.

9.11.1.2. Network Rail is demanding of the Secretary of State an unconstitutional act according to the custom and constitution of England, in that it is seeking imposition of an Order which may over-ride the aspirations of the communities which that Order affects. The essence of the strength and acceptance of English law is that: it contains the voice, will and aspirations of the people; as well as, the emphasis on gaining the consent of a community before enshrining orders and law. PH says the Order should not be made without the consent of the community

9.11.2. ***Consultation***

9.11.2.1. Network Rail's Statement of Case outlines the efforts it made to consult communities. There were no explanatory meetings arranged by Network Rail in Newmarket. The nearest was in Bury St Edmunds in 2016, at an address, allegedly difficult to find for the few who did attend. Furthermore, there is no indication that Network Rail intends to include

⁸⁰² See OBJ/84-2 Appendix 2.6a. The route is also shown on an earlier version of Chapman's map, attributed to 1768, but this date is not certain; see Appendix 2.6b

⁸⁰³ See Appendix 1.2, CF9; Appendix 1.1, Spreadsheet Col: "Physical and Mental Health/Effect on families with young children/ elderly/ infirm".

⁸⁰⁴ As proposed by David Rippington; see OBJ/84-2 Appendix 2.10.

⁸⁰⁵ See OBJ/84-2 Appendix 1.1, Spreadsheet Col, "Bridge".

⁸⁰⁶ See OBJ/84-2 Appendix 1.2, CF14

⁸⁰⁷ OP/INQ/108, OBJ/13/W1/1, OP/INQ/12, 42, 53, 71 and 78.

what it has learned from consultation into the Order it seeks. Without inclusion of community aspirations into any proposed Order, efforts to consult with communities become vacuous.

- 9.11.2.2. The Order was deposited on 24 March 2017 and the DfT invited objections and representations, these to be submitted by 5 May 2017, only a month and a half after the Order was submitted. The very short timescale of a month and a half dis-enabled the Newmarket community as a whole to come to understand what was happening. This led to a small response of 23 letters of objection being received by 1 November 2017. This should have rung 'alarm bells'. Out of a population of some 20,000 town-residents this indicated that they had not been sufficiently consulted.
- 9.11.2.3. PH has no doubt that Network Rail has fulfilled its obligations under the TWA. Nonetheless, he considers that its consultation process has not been at all effective in informing the citizens of Newmarket.
- 9.11.2.4. As a result, a small group of local residents took action to inform the public, including by distributing leaflets and compiling a petition, which said *'Most residents of Newmarket want or need the pedestrian Weatherby Railway Crossing to remain open. Some 400 crossings are made each day on foot, 146,000 crossings a year. Many are happy for a footbridge to accommodate prams and mobility scooters instead of a level crossing'* and was supported by 800 signatures by 30 January 2018.
- 9.11.3. **Permissive path**
- 9.11.3.1. PH indicates that he has written, fairly extensively, about why he thought Network Rail was hasty to claim Weatherby to be a Permissive Path, which seems to have been used as an excuse for Network Rail not extensively consulting the community of Newmarket about the crossing. PH understands the Inspector has ruled that the matter of the existence of rights of way or otherwise could not be decided at this Inquiry.
- 9.11.4. **Need**
- 9.11.4.1. PH considers that there is no reason to close S22 as part of the wider plan. The issue of 'East-West Rail' was brought up and whether this might be routed through Newmarket. Is it really the case that Network Rail or the Government may route high-speed, heavy container trains, perhaps, several per hour at all times of the day and night, right through the middle of a densely residential area, on rails which, through Newmarket, are often at roof height, ensuring significant noise to the community? In any event, the Warren Hill tunnel prevents large container trains from accessing the Newmarket branch to Cambridge.
- 9.11.5. **Risk**
- 9.11.5.1. At S22 there are only two passing trains an hour, between about 5 minutes past the hour to 20 minutes past the hour. The rest of the 45 minute period is free of trains. However, on the New Cheveley Road, route, vehicles are commonly passing at one car every 20 seconds.

That is three cars a minute, and much more in the morning rush hour from around 7 am to 9 am. Under these circumstances, PH considers that walking along the proposed alternative route presents a higher risk of accidents than use of the crossing.

9.11.5.2. The ALCRM score for S22, which, according to Network Rail, indicates that it is a high risk crossing, is misleading, being unsupported by historic events, with no accidental deaths over the last 150 years. In contrast to the ALCRM approach, historic road accident data forms the basis of highways risk assessments. Furthermore, the lack of consultation with the public means that the Network Rail's ALCRM score for the crossing, which is supposed to include public consultation, is compromised, that apart from its inaccuracy as regards the dangers and risks of the crossing.

9.11.6. ***SoM4-The diversion***

9.11.6.1. PH indicates that he has been resident on New Cheveley Road since August 1980, nearly 37 years. PH has not lived anywhere else in the interim. He says he has seen steadily increasing traffic negotiating New Cheveley Road during his residence and he has seen an especial increase in traffic density occurring in the last four to five years. He suggests that, during peak hours, the amount of traffic is becoming quite unpleasant and depending on wind direction there is reduced air quality at these times on New Cheveley Road.

9.11.6.2. Newmarket is a growing town. With increased numbers of people working in the town centre, the last five years or so has seen an increase in those workers seeking roads which are free to park-in. Old Station Road is very full of parked cars during working hours. From the High Street, travelling along Old Station Road, the route becomes Cheveley Road. Cheveley Road is becoming very congested due to cars parked both sides of the road, and even though part-parked on the pavement, this results in congestion of moving traffic. Heavy lorries are being particularly hindered on Cheveley Road.

9.11.6.3. To the west is The Avenue. Its free parking places are also commonly entirely filled, as are the roads leading off The Avenue. In searching for free parking, drivers are increasingly parking in New Cheveley Road, south of the under-bridge, St John's Avenue and Stretton Avenue. A new phenomenon is occurring in that taxis, apparently not fitting into their rank on the High Street, have started to await custom in the bus lay-by outside my house.

9.11.6.4. Many cyclists, particularly adult males, are travelling at high speed on the pavements, which is frightening for many walkers and such fear causes some walkers to be deterred from walking on the pavements where they may encounter cyclists.

9.11.6.5. Whilst PH acknowledges that his observations concerning traffic, set out above, are not substantiated by other evidence, as far as he is aware Network Rail has not provided any evidence to counter his observations. Under the circumstances, Network Rail's view that the proposed

alternative route is suitable and convenient cannot be regarded as definitive.

9.11.7. ***Emerging Policy***

9.11.7.1. In 2012 the Prince's Foundation for Building Community was invited by local Councils to create a vision for Newmarket, based on consultation with the community, the results of which were published in its *Newmarket: Enquiry by Design Workshop Report (2013)*. The recommendations included a proposed movement strategy, which identified S22 as forming part of a key north/south route through the town. This is reflected in the emerging Newmarket Neighbourhood Plan, albeit that plan is at an early stage in its preparation.

9.11.8. ***Potential cost to the community***

9.11.8.1. PH suggests that if it is assumed that half the population of Newmarket, around 10,000 people, use the crossing daily and that following closure, rather than using the proposed alternative route, they each travel into/out of the Town centre by taxi, at an estimated cost of £8 return; the annual cost would be around £29,200,000. These very high losses to the community need to be set against the very much smaller costs of maintaining the crossing open or building a bridge, which would separate the public from the rail track completely. Whilst in his original proof of evidence, Mr Kenning suggested that a bridge could not be built at S22, he later conceded that it would be difficult.

9.12. **OBJ/48-Mr & Mrs Brace (MMB)⁸⁰⁸**

9.12.1. The western boundary of MMB's property adjoins a field, along the western side of which Footpath 005 Thurston runs adjacent to the close boarded fence, around 1.8 metres tall, enclosing a neighbouring dwelling. The proposed new footpath, between P034 and P035, would run alongside MMB's western boundary, just behind their stables, outbuildings and manège. Whilst the original boundary was lined by trees and bushes, much of that planting has been cut down by the owner of the neighbouring field.

9.12.2. The owner of the field through which Footpath 005 Thurston passes cited problems such as burglary and dogs off the lead being a nuisance in support of relocating the footpath to the eastern side of the field. However, the existing route is not located near to his house. MMB indicate that, in contrast, people using the proposed footpath would be able to see straight into their house and garden, causing a loss of privacy.

9.12.3. Furthermore, MMB run an equestrian business at their property, breaking, training and preparing valuable livestock for dressage competitions. Due to the nature of the horses, they can be easily

⁸⁰⁸ OBJ/48-letter of objection, Statement of Case and proof of evidence with appendices.

startled or spooked by other animals, such as dogs. MMB suggest that the proposed new footpath would allow easy access onto their property. They are concerned about people and dogs trespassing onto their property and upsetting our animals as well as the horses being disturbed by people and dogs passing nearby on the proposed footpath, which would run alongside their western boundary and wrap around the southern boundary of the property, on 2 sides of MMB's manège.

- 9.12.4. MMB consider that the footpath through the neighbouring field should remain on the existing alignment of Footpath 005 Thurston. They suggest that if it is relocated as proposed, a 2 metre high close boarded fence would be required between the proposed footpath and their boundary in the interests of their safety and security and that of their livestock. Following consultation with the owner of the field, Network Rail has indicated that it would be willing to erect a 1.2 metre high chain link fence.
- 9.12.5. MMB consider that, as it stands, the Order proposal would adversely affect their quality of life and the value of their property.
- 9.13. **OBJ/42-M Johnston & A Fish⁸⁰⁹** (JF)
- 9.13.1. JF consider that the only relevant power within the *Transport and Works Act 1992* (TWA) for the creation of a new public right of way is that set out in section 5(6). This provides that an order under the Act 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.
- 9.13.2. They indicate that any right of way created under the power contained in section 5(6) must therefore be an alternative right of way, and, it is necessarily implicit that the alternative is required. The Oxford English Dictionary defines "alternative" as "*available as another possibility*". In common parlance this might be expressed as a different means of achieving the same objective. Similarly, "required" suggests a degree of necessity, something more than desirable or beneficial. It must be needed.
- 9.13.3. In considering whether a route can properly be described as an alternative, it is first necessary to establish what it is an alternative to. In the context of section 5(6) of the Act, it is clear that any right of way to be created is to be an alternative to the rights of way which are to be extinguished. In the context of S24 Higham Ground Frame, the public rights of way which it is proposed should be extinguished are Footpath 006 Barrow and Footpaths 002 and 003 Higham.
- 9.13.4. In order to determine what is necessary to provide an alternative to the rights of way to be extinguished, it is also necessary to consider what purpose or utility is provided by the routes to be extinguished.

⁸⁰⁹ OP/INQ/99.

- 9.13.5. In the view of JF, the theoretical utility of Footpath 006 Barrow and Footpaths 002 and 003 Higham is to provide a north/south link across the railway and the A14 and thence to the west to join Footpaths 001 and 013 Higham. At no point do the routes to be extinguished provide any link to the east, nor do they link with any route to the east which would be affected by the proposed extinguishment.
- 9.13.6. In practice however, the routes to be extinguished currently serve no purpose as, to quote from paragraph 21.2 of Mr Kenning's proof, '*...the existing north south link has effectively become severed by the traffic levels on the A14*'. Accordingly, in practice, and unrelated to the proposed crossing closure, the routes to be extinguished have no current purpose or utility. This was borne out by the traffic survey which recorded use on one occasion only, and this by participants in an organised event which used the crossing over the railway but was not confined to the public rights of way network and did not cross the A14.
- 9.13.7. JF consider that, given the severance of the route caused by the construction of the A14, and the lack of actual use of the routes proposed to be stopped up, it can be argued strongly that no alternative right of way is required, as no practical utility would be lost by the proposed extinguishment and that any 'alternative' route will necessarily represent betterment, and thus be outside the scope of the Order.
- 9.13.8. Where an alternative route is required, its purpose should be to preserve the connectivity, or utility, of the public rights of way network and usually this will be achieved by providing an alternative connection between the terminal points of the routes to be extinguished. In the case of S24, this is achieved by the proposed creation of a public footpath running west from the south of the crossing and using the existing bridge on Higham Lane to cross the railway to re-establish the link with Footpaths 001 and 013 Higham. By this means the theoretical connectivity of the existing rights of way network is preserved. In practice the connectivity is enhanced as a safe and usable means of crossing the A14 is provided.
- 9.13.9. In the view of JF, the proposed routes running to the east of existing Footpath 006 Barrow cannot be regarded as an 'alternative' to the rights of way to be extinguished. They have no relevance to the preservation of the connectivity of the existing network, which does not provide any route east of the routes to be extinguished. The proposed routes are not necessary to mitigate the effects of closure and unquestionably represent betterment of the network. Whilst it may be that betterment is acceptable when it arises incidentally to the creation of an alternative route, that is not the case here. The proposal to add these routes to the east would appear to be nothing more than the blatant adoption of the ambitions of Suffolk County Council to satisfy its *Rights of Way Improvement Plan*. Those ambitions have no part to play within the ambit of an order made under this Act, there being other legislative provisions (*The Highways Act 1980*) which are available to be used for those purposes.

- 9.13.10. To suggest that the routes to the east are required to mitigate the effect of extinguishment of existing rights of way is unsustainable. Looking at the wider current public rights of way network in the vicinity of S24, the opportunities for recreational walks would be in no manner diminished by reason of the proposed extinguishment and the creation of the routes to the west. The creation of the proposed routes to the east can be seen as nothing other than betterment of the network.
- 9.13.11. JF consider that the proposal to create a bridleway, P012A-P014 (B to C on the JF's plan⁸¹⁰) cannot be justified, on any grounds, as an alternative to a public footpath. It is manifestly betterment. Similarly the proposal to create a cross-field footpath south of the railway line, P015-P017, (D to E on the JF's plan) can in no sense be considered an alternative to the routes which are to be extinguished and particularly so given the proposal to create a route running from the crossing to the Needle's Eye underpass, P011-P012 (A to B on the JF's plan), which gives the same utility as the route D-E. One merely duplicates the effect of the other. Neither route is an 'alternative' to the routes to be extinguished, and on that basis, there is no "requirement" for one of them, and certainly not two.
- 9.13.12. It is accordingly JF's submission that the proposed creation of the routes to the east of the crossing is outside the scope and ambit of the Act, and that it is thus not necessary to consider the suitability and convenience of these proposed routes. Without prejudice to that submission, it is JF's case that the proposed routes B to C and D to E are neither suitable nor convenient for use as public rights of way.
- 9.13.13. The route B to C is proposed to be created as a bridleway. JF's evidence is that this route passes through land which is used for the testing of rifles and shotguns. The proposed bridleway would be adjacent to land used as an established and popular clay pigeon shooting ground. The land is particularly suitable for these uses and has been so used for many years. Such use is wholly incompatible with use as a public right of way (whether a bridleway or footpath) and for these reasons alone the land is not suitable or convenient for such use. Furthermore, the proposed bridleway connects with the public highway at point C giving access onto a small but busy road with access across the railway by means of a narrow bridge.
- 9.13.14. The Statement of Matters, dated 24 August 2017, states that it is necessary to consider the impact of the Order upon the landowner, and specifically any adverse impact on their ability to carry on their business. For the reasons outlined above, the imposition of a public right of way on the alignment B to C will have a seriously detrimental effect on JF's ability to use their land for its current and intended purposes. If the Order were to be confirmed, so as to create a public right of way on the B to C alignment, the current use of the land over which the route passes would have to cease as the use of firearms on this land would be

⁸¹⁰ OBJ/42/W1/2 Appendix 1.

wholly incompatible with use of a right of way by the public. The effect on JF's business would be substantial.

9.13.15. The route D to E passes across land currently used for commercial game shooting, an activity which is incompatible with recreational public access. The imposition of a route on this alignment will either endanger the public or restrict severely the capability of the land to be used for its current purposes.

9.13.16. JF submit that the Order should not be confirmed without amendment. It is JF's position that whilst they do not object to the proposed route P011-P012, the Order should be amended to remove the proposed routes P012A-P014 and P015-P017.

10. THE CASES FOR OTHER OBJECTORS WHO DID NOT APPEAR AT THE INQUIRY

Where the submissions made by other objectors reflect matters raised by the main parties, I do not repeat them in detail here. The gist of the material points made by objectors, who did not appear at the Inquiry, in their written submissions were:

10.1. S01 – Sea Wall

10.1.1. OBJ/83-Brantham Parish Council (BPC)

User survey

10.1.1.1. Network Rail's agent, Mott MacDonald, commissioned Tracsis Traffic and Data Services to carry out a video census over 9 days at the end of June/beginning of July 2016 on all of the Suffolk level crossings it proposed to close. However, S01 was not included in the census. Network Rail suggests a census was carried out in January 2017 showing 7 people using the crossing. However, the detailed census report has not been published with the other census data and BPC considers the submitted data to be fundamentally flawed. It does not match BPC's own survey findings from September and October 2015, where from 114 unique user responses: 84% indicated that they use the crossing; and, 72% said they would be concerned or extremely concerned if it was closed. Almost everyone who was questioned indicated that if the level crossing was closed, they would want to see an alternative provided, involving either a new bridge or routing a new footpath through the foot tunnel in the neighbouring factory site linked to the riverbank path that goes to the level crossing.

Safety

10.1.1.2. The crossing has good visibility and an excellent safety record. Network Rail suggests that 'noise of standing trains and works' from the Greater Anglia Depot under construction close to S01 might distract users of the level crossing from their natural duty of care in crossing what has proven to be an entirely safe crossing. However, the crossing is in a broad open space with a high degree of visibility and has been sited next

to what was a noisy factory and subsequently a demolition and construction site, with no consideration or evidence to suggest that safety has been affected by site noise.

Alternative route-environmental concerns and loss of amenity

- 10.1.1.3. On the south side of the railway the sea wall/river path is well used by local bird watchers, has excellent views and BPC objects to any part of that path being extinguished. It is also the route of the recognised long distance path The Stour and Orwell Walk and re-routing it would amount to a loss of heritage. Network Rail has indicated that the proposed diversion would add around 400 metres to the route. BPC believes this to be a conservative estimate and notes that the proposed diversion includes 2 steep inclines on either side of the railway in contrast to the current flat sea wall path, deeming this neither suitable nor convenient.
- 10.1.1.4. BPC is also concerned about the impact of the proposed diversion on a nearby reed bed habitat, which the Council understands was cultivated for environmental reasons.
- 10.1.1.5. BPC fears that sections of the proposed new right of way from P161 to P162, which are low lying, could be boggy or even subject to flooding. Furthermore, there is significant and established tree growth along the proposed alternative route. It appears impossible to provide a pathway without damaging cut back to these trees, which presently provide natural screening to the railway. These trees could also encroach onto the proposed footpath and thus force walkers to divert away from the proposed alignment onto agricultural land at a cost and inconvenience to the farm.

Alternative route-planning constraints

- 10.1.1.6. Footpath 013, to the north of the railway, is the subject of condition no. 14 attached to planning permission Ref. B/17/00441. It states that the footpath shall be safeguarded and remain unobstructed during the entire development phase. Condition no. 27 attached to planning permission Ref. B/15/00263/FUL/SMC, which relates to a mixed-use development including around 320 dwellings, indicates that prior to commencement of the residential development, an application to widen Footpath 013 to 2 metres must be approved in writing by the local planning authority. The reason given is to ensure that the public right of way is maintained to an appropriate standard.

Cost

- 10.1.1.7. The maintenance costs for the existing crossing appear, from the figures suggested by Network Rail, to be relatively low and, without doubt, less than the upkeep costs associated with the proposed alternative route, which involves around 600 metres of additional footpath and a number of foot bridges. BPC considers that it would amount to an unfair transference of current legal and financial obligations onto a private individual/farm business.

10.1.2. **OBJ/7-** The proposed alternative route is across unsuitable terrain. It would also deprive walkers and bird watchers of access to part of the sea wall, which provides one of the finest estuarine viewpoints in East Anglia. **OBJ/44-** Unless appropriate measures are taken by Network Rail between P161 and P162, trees on the lower slope of its embankment would damage the proposed fence and encroach onto the proposed footpath. This would result in users of the footpath diverting onto land retained in agricultural use, effectively diverting and extending the proposed footpath away from the mapped line. **OBJ/49-** The Notice posted on site makes reference to the temporary stopping up of Rectory Lane/bridleway 015 Brantham and forms part of the Stour Orwell Coastal Route. However, it neither identifies an alternative route nor a starting date and duration for the closure. Furthermore, as the plan labelled '*sheet 36, S01-Sea Wall Crossing*' does not show that crossing, it is incorrectly labelled and misleading. The route subject to temporary closure is used:

- a) By numerous dog walkers and visitors to routes along the sea wall;
- b) Regularly, by pupils of Brooklands Primary School to progress their forest education;
- c) Routinely, by staff and children from St Michael's Pre-school;
- d) Annually, as part of the route of the Brantham Fun Run; and,
- e) By vehicles serving the Anglia Water Group's Brantham Sewage Plant.

10.2. **S02 – Brantham High Bridge**

10.2.1. **OBJ/83-Brantham Parish Council** (BPC)

10.2.1.1. BPC accepts the safety concerns regarding this level crossing. It welcomes the proposed creation of a footway, to the east of the railway, along the A137 at the point where Footpath 006 Brantham joins the road, to allow a better connection to Footpath 001 Bentley. However, it does not support the proposed alternative to the west of the railway. BPC understands that an original alternative route had been proposed which would follow the existing Footpath 006 Brantham eastwards from the woodland to the railway. At the point of the existing crossing the footpath would turn south, alongside the railway, crossing the railway at the existing road bridge, before turning north next to the railway to join the original route of the footpath. BPC considers that that was an appropriate alternative route. The current proposed alternative would result in a loss of amenity and a less pleasant walk along the A137. BPC also understands that there are some issues with respect to the viability of the alternative proposed by Network Rail, such as in relation to erosion, instability and loss of mature trees.

10.2.2. **OBJ/44-**The proposal includes the retention of a dead-end section of Footpath 006 Brantham running from P153 adjacent to Victoria Cottage to the railway at P145/P154, with a short fence at its end point. It is

unnecessary and illogical to retain this short section of existing path, which would encourage users of the footpath to radiate from P145/P154 across agricultural land towards the railway and then alongside the railway and back in a loop towards the A137 Ipswich Road. The section of Footpath 006 Brantham running from P153 adjacent to Victoria Cottage to the railway should be stopped up at P153, to follow the diversion along the new footpath to P152.

10.2.3. **OBJ/62-** This objection relates to proposed works on the eastern side of the railway. The original route proposed by Network Rail during consultation, shown on drawing no. MMD-367516-S02-GEN-003 would be preferable to that which is now proposed. Proposed plot 6 seems to be a massive amount of land for a single path (around 18 metres wide by 75 metres long) and it contains 3 mature Oak trees, which are around 200 years old, as well as 2 large Ash trees. This seems to be a lot, particular as the Network Rail census recorded only 2 people using the crossing. Rather than starting part way along the driveway of Street Farm, at the southern end of plot 6, the proposed alternative route should start at the end of the driveway, between P150 and P149. Furthermore, between P149 and P155 the route would run along the edge of a cutting, which is in an unstable and dangerous condition, having been undermined by rabbits for many years. The footpath would have to be fenced as horses are kept in the field. Another possible route for the alternative would be, away from the railway, on the eastern side of the field beside the A137. It is not steep and could be accessed from the roadside layby.

10.3. **S03 – Buxton Wood**

There is nothing to add concerning this crossing.

10.4. **S04 - Island**

10.4.1. **OBJ/6-** Network Rail tells me that a train passes through this crossing every 5 minutes during every 24 hour period. Notwithstanding that it must be the busiest stretch of line in the country, there has never been an incident of concern there. Furthermore, the crossing was upgraded in January 2017, to include an automatic horn, new steps and handrails as well as a new plated crossing. It is even safer than it was before. There is no good reason to close this level crossing. **OBJ/21-** supports the principle of the diversion, the risks to human safety and rail users being disproportionate to the level of inconvenience which would be experienced by footpath users. However, OBJ/21 objects to the detail of the proposed diversion where it meets the highway, variously called Capel Road and Church Road. In particular, the extra part of the proposed diversion alongside the road to circumnavigate the separately proposed vehicle restraint barriers is completely unnecessary and would make the diversion irritating. Network Rail has not provided any risk assessment to support the need for the barriers. Even if they were supported in principle, OBJ/21 sees no reason why they should not be erected parallel to the railway and the existing fence line. This would also reinforce the separation between the new footpath and the railway line. This would also reduce the impact on the adjoining field.

10.5. **S08 – Stacpool**

There is nothing to add concerning this crossing.

10.6. **S12 – Gooderhams**

10.6.1. **OBJ/25** –The Order includes the acquisition of formal access rights across the owners land to get to crossings (S12 and Cow Creek). Whilst Network Rail may have such rights by long use, this is beyond the scope of the Order and should be removed.

10.7. **S13 – Fords Green**

10.7.1. **OBJ/22, 37** – We object to the provision of a new footpath between S13 and S69, on the eastern side of the railway, as Network Rail’s own studies indicate that very few people use S13. The same field already has 2 footpaths in it. The new footpath would also have consequences in relation to certain Environmental Plans we have under our farming schemes. **OBJ/25** – The proposed new footpath between Cow Creek and S13 amounts to betterment and is unnecessary in light of the low footfall recorded. There is enough existing footpath infrastructure to provide circular walks. The alternative originally proposed by Network Rail, which involved a footpath on the eastern side of the railway between S13 and Cow Creek would be better for all stakeholders.

10.8. **S16 – Gislingham**

10.8.1. **OBJ/11**- Proposed plot 5 covers the entire width of the main access to Eastland’s Farm and so would make the operation of the farm business at this site impossible at times⁸¹¹. Furthermore, it is not within the scope of a TWAO for Network Rail to seek to increase its rail maintenance facilities by permanently acquiring additional land rights.

10.9. **S17-Paynes**

There is nothing to add concerning this crossing.

10.10. **S18 – Cowpasture Lane**

10.10.1. **OBJ/50, 59** – Network Rail does not have any access rights across Mellis Common to S18 nor are they securing any rights under the Order. Therefore, any access would have to be from the Chapel Farm side of the railway. **OBJ/33** – We are not in favour of S18 being downgraded from a byway to a bridleway.

⁸¹¹ (Inspector’s note: Prior to the Inquiry, Network Rail confirmed that in light of this objection, it would withdraw plot 5 from the Order (NR/INQ/67 ‘Note on Suffolk Withdrawals’)).

10.11. **S21 – Abbotts (Mellis)**

10.11.1. **OBJ/55**- The railway separates part of the village from Mellis Common. The proposed alternative would involve pedestrians travelling between the two having to undertake either a long detour to cross at the less busy road crossing or a slightly shorter detour to cross at a much busier road crossing, which does not have a footway. It would amount to a loss of amenity and would reduce the safety of pedestrians. **OBJ/33** – We see no reason to close S21.

10.11.2. **OBJ/35, 45, 47, 50, 57, 59** – Mellis Common Rightholders object to the compulsory purchase of rights over plot 07⁸¹². Insofar as the proposed works affect the grazing of animals and gathering of hay crops by Rightholders, they will expect to be compensated. Compensation would also be required for: the loss of any historic rights of access across the railway at S21; and, losses associated with temporary use of plots 04 and 05. Any damage to the Common should be made good by Network Rail.

10.12. **S22 – Weatherby**

10.12.1. **OBJ/41-The Right Honourable Matt Hancock MP**⁸¹³ (MH)

10.12.1.1. MH supports closures of level crossings elsewhere where there is clear need or no detriment. However, the proposal to close S22 is unnecessary, would be to the significant detriment of local residents and the town, and sadly has been mishandled by Network Rail from the start.

10.12.1.2. Having inspected the site, and looked into the case history, MH can see absolutely no reason to close the crossing. The crossing has been in use for over sixty years. There have been no accidents. It is MH's view that the loss of amenity from closing the crossing would be very significant, and could well put the public in more danger, not less.

10.12.1.3. The railway line splits a large part of southern Newmarket off from the rest of the town, including both housing and also amenities like the football club. The railway also bisects a school catchment area, so children would be put at more risk by this proposed closure and alternative route.

10.12.1.4. The alternative route from southern Newmarket to the town centre runs under an underpass and has an incredibly narrow, and in MH's view dangerous, footpath. The distance is significantly further, and not within walking distance for anyone with a physical disability, and it is clearly a safety hazard. The overwhelming majority of residents are concerned that people who are used to using the pedestrian crossing over many years could scale any fence installed by Network Rail, leading to even greater danger.

⁸¹² (Inspector's note: Prior to the Inquiry, Network Rail confirmed that in light of this objection, it would withdraw plot 7 from the Order (NR/INQ/67 'Note on Suffolk Withdrawals')).

⁸¹³ OBJ/41, OP/INQ/10.

- 10.12.1.5. Crucially, there is absolutely no pressing need to close this crossing. It has been in operation for decades with no serious accident. The two fatalities recorded in the past ten years, neither recent, were both suicides and therefore not caused by lack of safety features at this crossing.
- 10.12.1.6. MH understands the overall drive within Network Rail to reduce the number of level crossings. This involves a significant investment programme, to ensure that crossing closings do not have negative local economic and social impacts, as it would in the case of the Weatherby pedestrian crossing.
- 10.12.1.7. MH supports more trains on the route and can see the strong argument to replace the crossing with a footbridge. So far, this suggestion has been rebuffed on the grounds that Network Rail does not own enough land on either side. However, there are significant verges on either side, which he is confident Suffolk County Council would release. Alternatively, other safety features could be introduced.
- 10.12.1.8. It is very disappointing that Network Rail have not engaged in any serious options appraisal. Their engagement of the local community has been minimal, at first proposing to hold the public Inquiry in a different town, clearly aimed at avoiding having to try any attempt at rational explanation of the decision. In total, Network Rail's behaviour indicates that the decision to close this crossing, despite the overwhelming evidence against, was predetermined. MH would be grateful if this proposal was therefore halted until a reasonable alternative could be properly investigated.
- 10.12.2. ***OBJ/61- Cambridgeshire County Council (CCC)***
- 10.12.2.1. CCC objects to the proposed closure of S22 and supports the case SCC is putting to the Inquiry.
- 10.12.2.2. CCC's *Business Plan 2017-18* sets out its strategic vision in support of the county of Cambridgeshire. CCC's priorities are:
- a) Developing the local economy for the benefit of all;
 - b) Helping people live healthy and independent lives; and,
 - c) Supporting and protecting vulnerable people.
- 10.12.2.3. Following on from these, CCC's strategic outcomes are that:
- a) Older people live well independently;
 - b) People with disabilities live well independently;
 - c) People at risk of harm are kept safe;
 - d) People lead a healthy lifestyle;
 - e) Children and young people reach their potential in settings and schools;

- f) The Cambridgeshire economy prospers to the benefit of all of Cambridgeshire residents; and,
 - g) People live in a safe environment.
- 10.12.2.4. CCC's *Rights of Way Improvement Plan* (CCC RoWIP) sets out in more detail how CCC will manage and improve the public rights of way network. It is a statutory requirement for all Highway Authorities under the *Countryside and Rights of Way Act 2000* (CROW Act). CCC's RoWIP was first adopted in 2006, and a revised version was published in 2016. It forms part of Cambridgeshire's Local Transport Plan 3 (CLTP3) and contributes towards delivery of the Council's main outcomes set out above.
- 10.12.2.5. The strategic objectives of the CLTP3 are:
- a) Enabling people to thrive, achieve their potential and improve quality of life;
 - b) Supporting and protecting vulnerable people;
 - c) Managing and delivering the growth and development of sustainable communities;
 - d) Promoting improved skill levels and economic prosperity across the county, helping people in jobs and encouraging enterprise; and,
 - e) Meeting the challenges of climate change and enhancing the natural environment.
- 10.12.2.6. There are clear links between the RoWIP Statements of Action and the CLTP3 objectives. The RoWIP 8 Statements of Action (SOA) with accompanying guiding principles (GPs) of which the most relevant are:
- a) 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 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;
 - b) SOA2 *A safer and health-enhancing activity* – GP2 – Countryside access provision should be safe for users and encourage healthy activities. Where significant potential conflict and 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 that path design is open and unthreatening and suitable for regular exercise. Safety-critical path infrastructure will be regularly inspected.

- c) 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 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;
- d) 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;
- e) SOA8 *A better countryside environment* – GP8 - The countryside access experience in Cambridgeshire should be straightforward, enjoyable and inspiring.

10.12.2.7. The CLTP3 works together with the *Cambridgeshire Health and Wellbeing Strategy 2016-17* (CCC HWS), 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, district councils, the county council, children's and social care and elected representatives. Maintaining and developing the rights of way network supports most of the priorities of the strategy. The key priorities relevant to the highway network are:

- a) Priority 2 *Support older people to be independent, safe and well*, which encourages older people to stay active and links to RoWIP SOA1, 2, 5 and 8;
- b) 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, 3, 5 and 8;
- c) 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, 2, 3, 5 and 8;
- d) Priority 5 *Create a sustainable environment in which communities can flourish*, which acknowledges the importance that good 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 3 aims:
 - i. 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;

- ii. 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; and,
- iii. 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.

The Health and Wellbeing Strategy priorities link strongly to the RoWIP Statements of Action.

- 10.12.2.8. The communities of Cheveley and Wooditton in Cambridgeshire have made representation to CCC that residents would be adversely affected by the proposed closure because it is used as an important off-road link on pedestrian routes into and out of Newmarket. CCC remains of the view that the proposed alternative on road route is both inconvenient and less accessible for pedestrians. CCC considers that the change would significantly discourage existing users to walk between their current destinations, encouraging them to drive instead or not to get out at all. This would be contrary to CCC and Government policy to encourage healthy lifestyles, strong communities and sustainable transport, reducing the burden on the NHS and thus on the public purse.
- 10.12.2.9. In particular, the proposal works against the cohesion of the local community by severing this very popular pedestrian connection, contrary to CCC's *Health and Wellbeing Strategy* Priorities 4 and 5; Business Plan. It would reduce sustainable transport links (Priority 5) and would discourage people from walking for physical and mental wellbeing, whether for short utility walks or for leisure and fitness (Priorities 4 and 5; RoWIP SOA1, 2 and 8). People deliberately choose to use an off-road route such as this, as it is direct. They do not like going a disproportionate way out of their way. They also choose such routes as they are off-road; they do not wish to walk alongside roads which are less green and have less wildlife around to enjoy.
- 10.12.2.10. Pedestrians may be at greater risk from using the alternative route through having to make more decisions in an environment with a greater number of factors to take into consideration than is the case with the current route. Even if they are not, they may perceive that they are, and perception is an important factor in their decisions.
- 10.12.3. **OBJ/58-Newmarket Neighbourhood Plan Steering Group**
- 10.12.3.1. The emerging Newmarket Neighbourhood Plan indicates that S22 shall be maintained as an important pedestrian and cycle link.
- 10.12.4. **OBJ/1**-The Secretary of State has a conflict of interest in signing off PRow closures, given his role in directing Network Rail. Network Rail has no legal obligation with respect to the safety of members of the public using level crossings. **OBJ/2, 4, 9, 10, 12, 14, 15, 17, 38, 63-82, 85-120**- The proposed alternative route, which is characterised by a steep hill and heavy traffic, would be too long for the elderly and people with disabilities who use the crossing to reach the town, effectively

cutting them off from its facilities or promote the use of cars, if available, with the associated parking problems. For others, the additional time needed to walk the alternative route, compared with using S22, would be inconvenient. A footbridge should be provided or other measures, such as miniature stop lights, introduced on the railway to reduce any safety risk. There have been no accidents caused by inattentive people at S22, which is safer than the roads with greater speeds and more frequent traffic. **OBJ/20**-Has lived on Willow Crescent for 6 years. Recently, train drivers have started sounding horns very frequently, and OBJ/20 is told that each such event is registered as a 'near miss', to give added weight to Network Rail's closure case. OBJ/20 has witnessed horns being sounded even when people are behind the gates waiting to cross, so any Network Rail statistics on 'near misses' need to be treated with great caution.

10.13. **S25 – Cattishall**

10.13.1. **OBJ/43 – Great Barton Parish Council (GBPC)**

10.13.1.1. Under the adoption of the Core Strategy and then the Local Plan by SEBC it has become necessary to expand on the Great Barton side of the railway in order to accommodate housing growth over the next 14 years. To support that development and reduce dependency on the motor vehicle, it is essential that S25 remains.

10.13.1.2. It is gratifying that the developer (Berkeley Strategic) along with SEBC, SCC and GBPC have constructively agreed the necessity of having 2 foot access and egress points over/under the railway for the development of around 1,250 dwellings. Furthermore, there can be little to argue against 2 crossing points, as this assures that at least one crossing would always be available to link this development to the town and the employment centre of the Suffolk Business Park. The financing of both crossings has been resolved and does not constitute a barrier to progress. At S25 the works would involve replacement of the level crossing with a footbridge before more frequent use results from the proposed housing development. Therefore, Network Rail's concerns with respect to safety risks associated with increased use of the level crossing are unfounded.

10.13.2. **OBJ/39** – S25 is an important crossing supporting leisure routes, such as National Cycle Network Route 13. The urban area is expanding and loss of this link would reduce access to bridleways and footpaths in the countryside to the north of the railway, forcing walkers, cyclists and horse riders onto busy highways, increasing health and safety risks.

10.14. **S27 – Barrell’s**

10.14.1. **OBJ/8** – The Order includes powers to temporarily stop up parts of Barrell’s Road, plots 18-20, which may affect access to Bridge Cottage. Works vehicles, machinery and operatives are likely to cause unacceptable noise levels, particularly at night. Furthermore, the highway adjacent to Bridge Cottage is showing signs of subsidence, which may be partly due to Network Rail maintenance vehicles parking there over the years. The proposed works may exacerbate this issue.

10.15. **S28 – Grove Farm**

10.15.1. **OBJ/122** – We object to the proposed new footpath cutting across the corner of our field, close to P031. If it followed the boundary of the field it would have less impact on our rabbit proof fence and would be safer, with reference to chemical application and machinery.

10.16. **S69 - Bacton**

10.16.1. **OBJ/24-** Bacton Parish Council has serious concerns regarding the proposed closure of S69 and the alternative route proposed by Network Rail. There is no footpath along Broad Road and the B1113, which is a very busy road, is a designated lorry route with no footpath. Bacton Parish Council considers that the existing route is far less dangerous than the alternative proposed by Network Rail. **OBJ/40-** S69 forms part of a very important pedestrian link between the football ground to the east of the railway and the residential area to the west. If it is closed, the only alternative would be a much longer route via Pound Hill and Broad Road. This would be likely to significantly increase car journeys between the 2 areas. The proposed new footpath between P073 and P071 would provide an important new link between the allotments/Bacton Primary School/playing fields, to the west, and the residential area to the east. The existing route between the 2 is along Church Road, which is less direct. **OBJ/121-** The proposed new route between P073 and P072 is not necessary, as there is an existing route referred to by OBJ/40, which is shorter. The proposed route would require various works to Pulhams Lane, which would be likely to restrict access by farm machinery. If such a link is required, it should be moved so that it does not run between OBJ/121’s 2 fields. **OBJ/124-** They indicate that the section of the proposed new footpath between P071 and P070 would pass close to their front bedrooms and lounge, having a dramatic effect on their privacy, quality of life and the saleability of their home. Furthermore, they say that the village is due to expand with various building sites being proposed, including one to the side of their property for around 100 homes, which would increase footfall on the new route past their property immeasurably. In addition, the footpath would pass through an existing garage court area, as a result of which the security of vehicles may be adversely affected and the movement of vehicles may harm the safety of footpath users.

10.16.2. **OBJ/25-** The proposed new footway under the railway bridge at Pound Hill, Bacton, would significantly reduce the usable width for vehicles under the bridge. If this restricts the movement of farm vehicles, it

would necessitate long diversions for very large and slow moving farm machinery through neighbouring villages. This would be both a safety issue for others and a cost issue for the farmer. This element should be removed from the Order or the width of vehicles allowed to cross at S12 should be increased, as mitigation.

10.16.3. **OBJ/37**- There is no need for a new footpath between S69 and S13, as Network Rail's survey indicated that S69 was hardly used. Furthermore, one of the factors cited by Network Rail to justify the proposed new route was to keep pedestrians away from the B1113, in the interests of safety. However, the proposed diversion would utilise the B1113 between the football club and Pound Hill. If Network Rail is serious about its concerns regarding pedestrians using the B1113, it would have moved Footpath 013 Bacton to the northern boundary of the football ground and the adjoining area of land, in order that pedestrians would join the B1113 around 100 metres further towards Pound Hill. The minimum width required for a field edge footpath is 1.5 metres, not the 2 metres sought by Network Rail. No explanation has been given by Network Rail as to why the former culvert/underpass beneath the railway between S13 and S69 cannot be brought back into use. **OBJ/5**- The Proposed works could be carried out without access across the football club's grounds⁸¹⁴.

10.17. **General objections**

10.17.1. **OBJ/51-the Environment Agency** (EA)-With reference to its original objection, the EA has indicated that subject to the modification of Schedule 11 of the Order in accordance with NR/INQ/3a, only one area remains in dispute⁸¹⁵. That is, whether if time elapses under paragraph 2(3) of the protective provisions without a decision by the EA, the application for consent is deemed to be refused or granted. Network Rail wants deemed consent, whereas the EA wants deemed refusal.

10.17.2. The EA hopes that there would be no need for either refusal or consent to be deemed, as it would endeavour wherever possible to make a decision within the timescale.

10.17.3. Historically the protective provisions agreed by the EA within TWA Orders have provided for deemed consent. This reflected what was, at the time, the relevant legal provision under sections 109 and 110 of the *Water Resources Act 1991*. In 2016, the flood defence consenting regime was transferred to the regime which authorises other types of environmental permit, and flood defence consents became 'flood risk activity' permits under the *Environmental Permitting (England and Wales) Regulations 2016* (EPR). Under the EPR, if a decision on a permit application is not made within the relevant period, the application is deemed refused.

⁸¹⁴ (Inspector's note: the objection was conditionally withdrawn (NR/INQ/85, 86) subject to access modifications which Network Rail agreed to promote as a modification to the Order-see NR/INQ/113).

⁸¹⁵ NR/INQ/35.

- 10.17.4. The protective provisions are for the purpose of replacing the EA's consenting/permitting regime. The EA would respectfully suggest, it is important to bear in mind that the purpose of this regime is to protect against flood risk. Consequently, the EA now seeks deemed refusal to be consistent with the EPR. Part of the reason for the change in legislation was to comply with EU law.
- 10.17.5. The Inspector will be aware that the EA often agrees protective provisions as part of Development Consent Orders (DCO) made under the *Planning Act 2008*. Although made under different legislation, the principle of the EA agreeing to 'dis-apply' the legislation relating to its consenting/permitting regimes in return for satisfactory protective provisions within DCOs is exactly the same. In the *Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014*, deemed refusal was accepted as appropriate by the Secretary of State. Since flood defence consents became flood risk activity permit under the EPR, the EA has sought deemed refusal as a matter of course in draft DCOs. The EA would like to draw the Inspector's attention to the decision dated 1 December 2017 in relation to the application for a DCO for Junction 10A of the M20. In Hearings relating to that application, the point about deemed consent/refusal was argued and the EA has submitted extracts from the examining authority's recommendations, which were adopted by the Secretary of State for Transport on this point.
- 10.17.6. Network Rail argues that the EA consent is simply the 'how', but this is no less the case than where an applicant seeks planning permission and a related flood risk activity permit.
- 10.17.7. The protective provisions are otherwise agreed by the EA.
- 10.17.8. **OBJ/52**-the Royal Mail Group Limited (RMG) objects to the Order on the basis that its operational and statutory duties to collect and deliver mail may be adversely affected. It is unable to fully determine the potential impact from the information supplied. In particular RMG has concerns regarding the temporary stopping up of:
- a) S22-Granary Road in the parish of Newmarket⁸¹⁶;
 - b) S23-A14 on-slip westbound, Higham Road and Coalpit Lane in the parish of Higham⁸¹⁷;
 - c) S27-Barrell's Road in the parish of Thurston⁸¹⁸;
 - d) S05-The Street in the parish of Wherstead (withdrawn by NR⁸¹⁹);
 - e) S04-Church Road/Bentley Bridge in the parish of Bentley⁸²⁰; and,

⁸¹⁶ Order plan sheet 1.

⁸¹⁷ Order plan sheet 2.

⁸¹⁸ Order plan sheet 11.

⁸¹⁹ (Inspector's note: Prior to the Inquiry, Network Rail confirmed that it would withdraw S05 from the Order (NR/INQ/67 'Note on Suffolk Withdrawals')).

⁸²⁰ Order plan sheet 32.

f) S02-The A137 in the parish of Brantham⁸²¹.

11. OTHER REPRESENTATIONS

REP/1 - Essex & Suffolk Water has no objection to the Order. **REP/2**-Tarmac does not object to the proposals associated with S08. However, there may be a need for additional signage for footpath users over the railway bridge, to ensure that they are aware of its use by vehicles. Furthermore, a low voltage power line is shortly to be installed close to the route of the footpath (plot 06) and Network Rail should ensure that any new fencing posts avoid the line. **REP/3**-Historic England has no objection on heritage grounds.

⁸²¹ Order plan sheet 35.

12. INSPECTOR'S CONCLUSIONS

12.1. Whether it is appropriate to use the TWA procedure

12.1.1. The question as to whether it is appropriate to use the TWA procedure in this case is a matter of disagreement between Network Rail and the Ramblers' Association, in relation to which both parties have made submissions [3.1.1-3.1.15, 8.2.1-32].

12.1.2. The Ramblers' Association considers that it is inappropriate to use a Transport and Works Act Order (TWAO) to pursue the level crossing closures and diverted routes (the proposals) envisioned in the draft Order. The Ramblers' Association draws attention to the existence of sections 118A and 119A of the *Highways Act 1980* (HA 1980), which enable the stopping-up and diversion of footpaths, bridleways and restricted byways that cross railways, and which, in the Ramblers' Association's view are the correct statutory provisions to be applied by Network Rail to carry out the level crossing closures included in the Order.

12.1.3. However, the Ramblers' Association accepts that there are a number of different means by which to close or divert public rights of way, and that the existence of one such power does not, necessarily, prevent the use of another [8.2.17]. Furthermore, each has its own pre-conditions.

12.1.4. Section 1 of the TWA states, in the relevant part [8.2.5]:

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;...

12.1.5. Furthermore section 5(6) of the TWA provides:

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.

12.1.6. With reference to section 1(1) of the TWA, it appears to me that the closure of level crossings and the provision of associated diversions to enable former users of those crossings to cross the railway at another location are matters relating to, and ancillary to, the operation of the transport system.

12.1.7. The guidance to the TWA, *A Guide to TWA Procedures*, indicates at paragraph 1.14 [8.2.30]:

'...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 an inland waterway or public right of way where no associated new works requiring a TWA order are proposed.

- 12.1.8. However, the proposals do not simply comprise the closure of public rights of way. Diversion routes, made necessary by closure, are proposed in most cases, the provision of which is intended to be facilitated through the grant of powers of acquisition of land and/or rights allowed for under the TWA.
- 12.1.9. As to whether the proposals could be more properly dealt with under the terms of the HA 1980:
- a) There appears to be no dispute that nothing in the HA 1980 would empower Network Rail to acquire such land or rights as might be necessary to provide the proposed diversions [3.1.10]; and,
 - b) In order to proceed by way of the provisions of the HA 1980, such as sections 118A or 119A, it would first be necessary to show that the stopping up or diversion of a public right of way would be expedient in the interests of the safety of members of the public using it or likely to use it. Network Rail has confirmed that that is not the basis upon which it is pursuing the Order [3.1.8]. Its justification is based on a combination of factors, comprising:
 - a. The safety of rail users and of those interacting with the railway by reason of the crossing points over the railway;
 - b. The efficient use of public funds; and,
 - c. The operational efficiency of the network,which together constitute its strategic case in support of the Order [8.2.18].
- 12.1.10. Under the circumstances, I consider it is unlikely that the proposals could be more properly dealt with under the terms of the HA 1980.
- 12.1.11. Network Rail has indicated that the use of the TWA procedure to effect closure, or amend the status, of level crossings is not unprecedented [3.1.14]. However, 3 of the 4 cases it refers to appear to include the provision of new infrastructure over a railway, unlike the Order scheme, and, based on the limited information provided, I cannot be sure that the circumstances in the fourth case are directly comparable to those in the case before me [8.2.15]⁸²². Therefore, I consider that they are of little assistance.

⁸²² NR/INQ/63 Tabs 10-13.

12.1.12. However, having regard to the submissions made, I consider overall, that it is appropriate to use the TWA procedure in this case. That said, this is a legal matter upon which the Secretary of State may wish to take advice.

12.2. **The tests to be applied**

12.2.1. The purpose of this report is to allow the Secretary of State to come to an informed view on whether it would be in the public interest to make the Order and give the associated Direction in respect of Deemed Planning Permission⁸²³. A number of factors need to be taken into account when determining, on balance, whether it would be in the public interest.

Factors to be considered with respect to the public interest balance

12.2.2. In support of the Order, Network Rail cites benefits to the railway, which it considers would be realised; its strategic case. Network Rail acknowledges that its strategic case is not the only matter to consider when determining whether or not the Order should be made and that a 'balancing act' is required. However, it suggests that if it has made out that strategic case for the Order, the only basis on which the Order could either not be confirmed, or confirmed with modifications, is if the test set out in section 5(6) of the TWA is not met. I do not agree, for a number of reasons.

12.2.3. Firstly, section 5(6) of the TWA provides:

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.*

12.2.4. In my view, the outcome of the section 5(6) test is not a matter to be weighed in the public interest balance. The test essentially sets out a condition precedent that would need to be satisfied if a level crossing closure, which includes the extinguishment of a public right of way, is to be included in the Order⁸²⁴. In this case, it potentially limits the scope of what may be included in the Order. To my mind this is a matter to be determined before consideration can be given to where the public interest lies, not least as removing a crossing from the Order, as a result of a failure to comply with section 5(6), would not only mean that any adverse consequences associated with its closure would not be realised, but also the scale of the benefits to the railway associated with the Order, through level crossing closure, would be reduced.

⁸²³ For example, DfT 'Transport and Works Act Orders: a brief guide' para 4, NR/INQ/30 para 2.5.

⁸²⁴ OP/INQ/24 para 20.

12.2.5. Secondly, the matters to be 'weighed in the balance' when determining the public interest are not limited to potential benefits to the railway, whilst understandably of particular concern to Network Rail. The *Guide to TWA Procedures* indicates that the Secretary of State may need to address a wide range of issues and policies, in deciding whether it is in the public interest to grant the powers applied for in a TWA Order, including taking due account of any objections made, providing the issues raised are relevant to the particular powers being sought in the Order⁸²⁵. For example, such matters may include the likely impact of Network Rail acquiring rights over the land of others⁸²⁶. The *Government's Guidance on Compulsory purchase process and The Crichel Down Rules (2018)* confirms, amongst other things, that: 'A compulsory purchase order should only be made where there is a compelling case in the public interest'; and, 'the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected'. The SoM sets out the matters upon which the Secretary of State wishes to be informed.

Application and interpretation of section 5(6)

12.2.6. A range of opinions have been expressed regarding the application and interpretation of section 5(6) of the TWA [8.2.33-39]⁸²⁷. I take the following views:

- a) Where the closure of a level crossing would not necessitate the extinguishment of a public right of way, for example if the level crossing is subject only to private rights of way, section 5(6) does not apply.

However, to my mind, in such circumstances, it may be that the absence of an alternative route is a material consideration when separately considering the public interest balance.

- b) Sections 5(6)(a) and 5(6)(b) are concerned with provision of 'an alternative right of way', not necessarily provision of an alternative 'public' right of way. Therefore, the terms of section 5(6)(a), 'an alternative right of way has been or will be provided', would be met in circumstances where an alternative route over which the public is legally entitled to pass and repass, either as a public right of way or as a highway, has been or will be provided.
- c) The terms of section 5(6)(b) 'the provision of an alternative right of way is not required' would be met if a public right of way over a level crossing is no longer used. In my judgement, it is not concerned with circumstances in which an alternative right of way is already available, as that falls within section 5(6)(a).

⁸²⁵ NR/INQ/63 Appendix 23 para 1.21.

⁸²⁶ NR/INQ/63 Appendix 23 para 1.39.

⁸²⁷ NR/INQ/13, NR/INQ/26, OP/INQ/24.

- d) Under the terms of section 5(6) there is no requirement to have regard to the tests set out in sections 116-119A of the Highways Act 1980⁸²⁸, such as the requirement to consider *'whether it is reasonably practicable to make the crossing safe for use by the public'*.⁸²⁹

12.2.7. The *Guide to TWA Procedures* indicates 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'*. A range of opinions have also been expressed regarding the interpretation of this guidance⁸³⁰. I take the following views:

- a) It is reasonable to regard the requirement for an alternative to be a convenient and suitable replacement for existing users as applying to both an alternative right of way which *'has been'* provided and an alternative right of way which *'will be'* provided.

Whilst Network Rail has indicated that in practice it has tested both existing and proposed alternatives against that requirement, it appears to suggest that, with reference to the wording of the *Guide to TWA Procedures*, the requirement strictly only applies to alternatives that *'will be provided'*⁸³¹. I do not agree. In my judgement, it is unlikely the intention of the guidance is to indicate that an alternative which *'will be provided'* needs to be a convenient and suitable replacement, whilst an alternative which *'has been provided'* need not be a convenient and suitable replacement for existing users of the public right of way to be extinguished.

- b) *'Existing users'* means any person who uses the public right of way at the time and any person who might reasonably be expected to use it, considering its location and purpose⁸³².

In my judgement *'existing users'* does not include people who, whilst they may be legally entitled to do so, are unable to use a route as a result of accessibility constraints that form part of it, such as steps or styles. People who theoretically may use a route in the future following the construction of a new development in the area would not constitute *'existing users'* either⁸³³.

However, I consider that the absence of any users being recorded during Network Rail's crossing census surveys would not be

⁸²⁸ NR/INQ/26 para 10.

⁸²⁹ NR/INQ/63 Tab 4 section 118A(4)(a), 119A(4)(a).

⁸³⁰ E.g. NR/INQ/26, NR/INQ/45, OP/INQ/23, OP/INQ/24, OP/INQ/28.

⁸³¹ NR/INQ/45 paras 8-13.

⁸³² NR/INQ/26 paras 13-18.

⁸³³ NR/INQ/26 paras 14.

sufficient to demonstrate that there are no existing users, as the surveys were of a relatively short duration, described by Network Rail as '*only provided a 'snapshot' of a point in time and was not determinative, nor treated as determinative, of levels of use*' [3.5.5.8]. Evidence associated with the S11-Leggets crossing reinforces my view, as whilst no users were recorded during the survey, consultation responses confirmed that the route is used, albeit infrequently. Furthermore, a nil return survey associated with a crossing which is temporarily closed on safety grounds, for example at S23, cannot be regarded as providing a reliable indication that the crossing would not otherwise be used⁸³⁴.

- c) As regards the meaning of '*a convenient and suitable replacement*', it is reasonable to give those words their ordinary meaning⁸³⁵ as a starting point:
- i. Suitable-right or appropriate for a particular person, purpose or situation;
 - ii. Convenient-fitting in well with a person's needs, activities and plans involving little trouble or effort; and,
 - iii. Replacement-a thing that takes the place of another.

Furthermore, it is necessary to take account of the purpose and use of the existing route, its local environment and relationship with the wider PRow network. Whilst not an exhaustive list, factors that may be relevant to consider include⁸³⁶:

- i. Length of route;
 - ii. Maintaining desire lines to users' destinations;
 - iii. Accessibility of the route, including the gradient and any obstacles;
 - iv. Safety of the route; and,
 - v. Surface of the route; and, risk of flooding.
- d) In the context of determining whether a crossing closure should be removed from the Order on the basis of section 5(6) and the associated guidance, I share the view of Network Rail that when considering whether a replacement is '*suitable*', it is not necessary to have regard to the effect that the diversion would have on public enjoyment of the path or way as a whole [3.5.1.10-13, 9.3.4.1]. This is not a particular requirement of section 119A of the

⁸³⁴ NR/INQ/26 para 15.

⁸³⁵ NR/INQ/26 source 'Concise Oxford English Dictionary 2011'.

⁸³⁶ NR/INQ/26 paras 8-9, NR/INQ/12 House of Commons Transport Committee-Safety at Level Crossings, February 2014 page 16.

Highways Act 1980 (*Diversion of footpaths [, bridleways and restricted byways] crossing railways*) either⁸³⁷.

Nonetheless, I recognise it is possible that an existing route might have particular value as regards public enjoyment/amenity value and I consider that may subsequently weigh in the public interest balance, undertaken separately from consideration of the section 5(6) requirement. [3.5.1.14, 8.3.22, 9.1.1, 9.1.7] My view in this regard is reinforced by the *National Planning Policy Statement for National Networks* (NPSNN), which indicates that in considering revisions to an existing public right of way consideration needs to be given to, amongst other things, the attractiveness of the right of way⁸³⁸.

12.3. **Side Agreement**

12.3.1. At the start of the Inquiry, SCC confirmed that it maintained an objection to the whole Order subject to amendments being made to the Order, amongst other things: a) to address concerns regarding the certification process for rights of way set out in Article 16; and, b) to provide an appropriate mechanism for agreeing commuted sums [3.3.25]. These concerns were echoed by the Ramblers' Association [3.6.3, 8.3.14-15]. SCC confirmed in closing that as a result of a formal Side Agreement having been reached between SCC and Network Rail on 23 May 2018, and an agreed proposed modification to Article 16 of the Order (Article 16A), those objections to the Order have been withdrawn [3.3.26, 5.4.2.1-2]. A joint statement, by Network Rail and SCC, providing an outline of the matters included in the Side Agreement, dated 24 May 2018, was also submitted to the Inquiry along with a further note of clarification on 25 May 2018⁸³⁹. In my judgement, this provides reasonable assurance that the concerns raised by SCC, and echoed by the Ramblers' Association [8.3.14]⁸⁴⁰, have been satisfactorily addressed.

12.4. **Alternatives-SOM2**

12.4.1. Network Rail has indicated that the purpose of the Order is to address the objective of Phase 1 of the *Anglia CP5 Level Crossing Risk Reduction Strategy*, which is:

'Mainline crossings that are clearly unused or have extremely little use would be extinguished. Also, crossings that would be included are those that have a nearby alternative route utilising existing bridges as a means of crossing the railway'. [3.3.7-8]

with a view to contributing towards 3 strategic aims:

- a) The safety of rail users and of those interacting with the railway by reason of the crossing points over the railway;

⁸³⁷ NR/INQ/63 Tab 4 section 119A.

⁸³⁸ NR/INQ/4 Appendix 5.1 para 5.184, Ms Tilbrook confirmed in oral evidence that whilst enjoyment of a route is not a consideration when determining whether an alternative route would satisfy the 'suitable and convenient' test, it would be a material consideration in the overall consideration of the case for closure of a crossing.

⁸³⁹ NR/INQ/122 (134-signed and dated) and NR/INQ/129.

⁸⁴⁰ OP/INQ/86.

- b) The efficient use of public funds; and,
- c) The operational efficiency of the network.

12.4.2. Network Rail did not actively consider, in developing the Order scheme, whether instead of closure of the 24 crossings within it, it should instead install technology and/or provide infrastructure under or over the operational railway. Whilst, to my mind, such alternatives have the potential to improve safety and improve the resilience of the timetable, insofar as it may be affected by accidents/incidents, they would not fit well overall with Network Rail's strategy. For example, in relation to efficient spending, it is clear, based on the cost estimates provided, that closure is the cheapest option for Network Rail, a matter expanded on below [3.3.23-24]⁸⁴¹. As to whether Network Rail's strategy and the Order are in the public interest are separate matters, which I will come to later.

12.4.3. The evolution of the scheme from conception, through consultation and design, to final proposals within the Order followed Network Rail's *Governance of Railway Investment Projects (GRIP)*⁸⁴²:

- 1) GRIP 1 (Output definition)-Network Rail, with the support of design consultants Mott MacDonald, undertook an initial assessment to identify possible candidates/concept solutions for Phase 1;
- 2) GRIP 2 (Pre-feasibility)-a range of studies were undertaken to inform consideration of the feasibility of the concept solutions and identify alternative route options;
- 3) GRIP 3 (Option selection)-Information gathered at GRIP 1 and 2 was used to prepare information for the first round of public consultation, in June 2016, including details of multiple possible diversion routes at crossings where available. Based on the information gathered, including consultation feedback and technical studies, the options were appraised and a single preferred option identified for each crossing. Following a second round of public consultation, in September 2016, and a review of feedback, an option was selected for each crossing. Further targeted consultation was carried out where there were significant changes from the round 2 consultation routes. Consultation with private landowners affected by the proposals continued after deposition of the Order on 24 March 2017.

12.4.4. Network Rail has identified the reasons why particular options were discounted in its evidence, NR32/1 section 2, on a crossing by crossing basis. Where an objector continues to promote one of those discounted options, or a previously unidentified option, I have dealt with it below

⁸⁴¹ For example, NR7-cost estimate for the closure of the Order crossings is £2,204,473, which equates on average to around £100,000 per crossing. By comparison, if a crossing remains open maintenance costs would continue to be incurred. NR/INQ/21- if upgraded, for example, to include miniature stop lights the cost would be around £300,000.

⁸⁴² NR26 paras 129-152, NR/32-1 sections 1.5-16.

when considering crossing specific matters. The *Guide to TWA Procedures* indicates that:

'Applicants should bear in mind that alternative route alignments for linear schemes, or alternative locations for ancillary facilities, are often put forward by objectors. In considering a TWA application, the Secretary of State's concern is to establish whether the particular proposals submitted for approval are acceptable. If they are, the Secretary of State is not required to determine whether or not there might be a better alternative. But that does not mean that the presentation of evidence by objectors on possible alternatives would necessarily be ruled out as irrelevant. If, for example, it were clear that a particular route chosen (or part of it) would give rise to significant environmental damage, and an objector were able to demonstrate that an alternative alignment would meet the scheme's objectives without causing such damage, the Secretary of State might consider that to be a reason for modifying or rejecting the submitted proposals (whether modification would be appropriate would depend on how substantial the changes would be).'

12.5. The scope of the Order, with reference to section 5(6) of the TWA-SoM4

12.5.1. Crossings subject to section 5(6)

- 12.5.1.1. Whilst the Order as drafted would allow the closure of 23 level crossings and the downgrading of 1 other level crossing, prior to the Inquiry Network Rail confirmed that S05 would be removed⁸⁴³. Furthermore, towards the end of the Inquiry Network Rail also requested that S07 be removed from the Order⁸⁴⁴.
- 12.5.1.2. The crossing that would be downgraded is S18. It is a BOAT with a Prohibition of Driving Order, which restricts usage to that equivalent to a public bridleway. Therefore, as the proposed downgrading of the crossing from a BOAT to a bridleway would not alter the current usage, an alternative is not required; section 5(6)(b) applies.
- 12.5.1.3. Under the terms of the Order and subject to the removal of S05 and S07, public rights of way would be extinguished at 19 crossings⁸⁴⁵. Network Rail has taken the position that at the other 2, S21 and S22 there are no recorded public rights of way, a matter which I will return to below.
- 12.5.1.4. In relation to the 19 crossings referred to above, with the exceptions of S11, S23 and S29, Network Rail has a record of at least one census survey at each of those crossings which show use. Furthermore, Network Rail acknowledges that the census data *'only provided a snapshot of a point in time and was not determinative, nor treated as*

⁸⁴³ NR/INQ/67.

⁸⁴⁴ NR/INQ/128.

⁸⁴⁵ S01, S02, S03, S04, S08, S11, S12, S13, S16, S17, S23, S24, S25, S27, S28, S29, S30, S31 and S69.

determinative, of levels of use' and it suggests that regard should also be had to public consultation feedback [3.5.5.8]. For example, a number of people provided feedback during the first round of public consultation to the effect that they use S11 and S29. With the exception of S23, there is evidence in the form of census data and/or public consultation feedback to indicate that 18 of the 19 crossings referred to above are used to some degree, including S02 and S29 when open⁸⁴⁶. Consequently, in my judgement, none of them fall within section 5(6)(b) '*an alternative right of way is not required*'. Whilst Network Rail considers that S11 falls within section 5(6)(b), on the basis that it has assumed that existing highways would be used for the necessary diversion, as I have explained, I consider that circumstances such as these fall instead within section 5(6)(a) '*an alternative has been provided*'. Therefore, the 'suitable and convenient test' is applicable to all 18.

12.5.1.5. As to S23, notwithstanding the absence of any evidence of use from the census survey and public consultation, it cannot be reliably concluded that the crossing is not used, not least as the crossing was temporarily closed during the survey [3.5.18.2]. Furthermore, the public consultation did not identify any users of S23 or S24 and yet the census survey at S24 recorded 50 users⁸⁴⁷. Network Rail does not dispute that the crossing may be used when open and it considers that section 5(6)(b) applies, on the basis that it has assumed existing highways would be used for the necessary diversion. I agree that a diversion is necessary and, for the reasons set out above, section 5(6)(a) '*an alternative has been provided*' applies. Therefore, the 'suitable and convenient test' is also applicable to the S23 proposal.

12.5.1.6. Network Rail's position that there is no recorded public right of way at S21 has not been disputed and it follows that section 5(6) would not apply there. However, a number of objectors expressed the view at the Inquiry that a public right of way does exist at S22. For the purposes of this Inquiry, it has been agreed that the proposals should be considered in the same way as crossings which are indisputably subject to public rights of way in the Order. It is clear that S22 is routinely used by significant numbers of people, a matter evidenced not least by Network Rail's census survey. Network Rail has indicated that the existing highway network provides an alternative to S22. As I have indicated above, I consider that circumstances such as these fall within section 5(6)(a) '*an alternative has been provided*' and the 'suitable and convenient test' is applicable. Network Rail has confirmed that, if the Secretary of State is not satisfied that the proposed alternative route would be suitable and convenient, then S22 should be removed from the Order. In effect, the section 5(6) test is to be applied. [3.5.17.7]

⁸⁴⁶ S02, S23 and S29 are temporarily closed.

⁸⁴⁷ NR/32-1 section 2.14.

12.5.1.7. Overall therefore, the section 5(6) and 'suitable and convenient' tests of alternatives are applicable in this case to 20 of the 22 crossings still proposed for closure (not S18 or S21).

12.5.2. **General points**

Crossing purpose

12.5.2.1. Network Rail's assessment of the purpose for which an existing route is used, informing the purpose to be served by a suitable and convenient alternative, is based on factors such as the local environment, the relationship of the route to the wider public rights of way (PRoW) network and limited information provided through the consultation process concerning the purpose(s) for which a crossing is used. Furthermore, the census surveys undertaken by Network Rail did not gather any origin and destination data. Under the circumstances, I consider that Network Rail's conclusions regarding the usage and purpose of a route must be treated with caution.

Comparative safety risks of level crossing and other routes

12.5.2.2. Insofar as Network Rail's strategic case for the Order relates to safety, it is pursued in the interests of the '*safety of rail users and of those interacting with the railway by reason of the crossing points over the railway*', for which Network Rail is responsible [3.2.3].

12.5.2.3. In its submissions, Network Rail has made reference to level crossing risk scores derived by its *All Level Crossing Risk Model* (ALCRM). However, for the following reasons, I consider that the model output is of little assistance in this case. The ORR indicates that the output is a risk ranking, not a risk assessment⁸⁴⁸ and Network Rail has confirmed that ALCRM's main purpose is to support Network Rail's management of level crossing risk across its network by providing a consistent methodology for assessing the relative risks of different level crossings within its asset base⁸⁴⁹. Network Rail has stated that, in this case, it has not been used to select or prioritise crossings for inclusion in the Order [3.2.7]. Instead Network Rail has selected crossings on the basis that: all level crossings carry risk; removal of crossings is always the first option to be considered, as supported by the ORR; and, crossings have been selected either on the basis that they are unused or have extremely little use, or there is a nearby alternative route for crossing the railway⁸⁵⁰ [3.2.15].

12.5.2.4. I acknowledge that closing a crossing achieves Network Rail's safety aim insofar as it prevents: users from being exposed to the safety risks associated with using that crossing; and, other rail users from being exposed to the safety risks associated with incidents arising from the use of that crossing [3.2.11-12, 28]. However, whilst it is indisputable that risk is associated with the use of level crossings, the same can be said

⁸⁴⁸ NR14 para 24 footnote 8.

⁸⁴⁹ NR/27-1 section 8.

⁸⁵⁰ NR18 para 2.1.2.1.

regarding the use of other routes, such as highways. It does not automatically follow that overall, the impact on public safety of closing a level crossing would be either neutral or beneficial. For example, it is conceivable that, due to the closure of a level crossing, former users may be encouraged or compelled to use an alternative route, as a result of which they and others may be exposed to greater safety risk. [9.10.2, 9.10.4.1]

12.5.2.5. There is no established methodology for comparing the safety risk at level crossings with safety risks on alternative routes, such as highways [3.5.2.2, 5.4.2.5, 5.4.9.2, 8.3.17]. In my view, the generic finding of the House of Commons Transport Select Committee to the effect that *'if an average walking trip includes a level crossing, the fatality risk to a pedestrian is about double the risk of an average walking trip without a level crossing'* is of no assistance in judging the particular merits of the specific proposals before me [3.5.2.2]. Furthermore, I give little weight to Network Rail's argument that if an alternative route is already being used by pedestrians, it indicates that it is 'safe' to use, which is inconsistent with the approach it takes to level crossings [5.4.2.6]. Network Rail has indicated that whilst if a level crossing is open for use it means it is considered to be 'fit for use today', it does not mean that Network Rail doesn't have any concerns and would not seek improvements in the longer term [3.2.18]. Therefore, in common with Network Rail's approach to level crossings, I consider that, in the absence of a more detailed assessment, all that can be implied from the mere availability of an alternative route, such as a highway, is that the route is considered by the responsible authority to be 'fit for use today'. Furthermore, in the same way as the greater number of people using a crossing, the greater the likelihood of an incident occurring; the more people who, as a result of the Order, would be directed to an alternative route, which includes safety hazards, the risk of an incident occurring would increase [3.5.17.6].

12.5.2.6. Under these circumstances, I consider that a pragmatic approach would be to assess proposed diversion routes on their own individual merits to judge whether associated safety issues, if there are any, would be satisfactorily resolved, having regard to the particular circumstances, associated standards and assessment tools, such as Road Safety Audits, and the provisions of the Order. If they would, the route may be regarded as suitable from a safety point of view. If they would not, the proposed diversion would not be fit for purpose and would not be a suitable alternative. [5.4.2.5]

Approval of the Highway Authority

12.5.2.7. Article 16(1) of the Order indicates that the proposed new public rights of way, that is the routes which are specified in column (5) of Part 1 of Schedule 2, are to be completed to the reasonable satisfaction of the Highway Authority⁸⁵¹. It is conceivable that some issues identified by objectors concerning the proposed routes may be resolved as part of the detailed design stage, which would follow the Order being made and

⁸⁵¹ NR2.

thereafter would be secured, under the terms of Article 16, 'to the reasonable satisfaction of the Highway Authority'.

- 12.5.2.8. However, it may be determined that, based on the evidence available, there is no reasonable prospect of a proposed route providing a suitable and convenient alternative to a particular crossing, where one is required. Under those circumstances, I consider that neither Article 16 nor the Side Agreement provides any surety of a satisfactory outcome and the crossing should be removed from the Order. In my view, this approach is consistent with that of Network Rail and SCC [3.1.18, 5.4.3.20, 5.8.1].

Equality

- 12.5.2.9. I have had regard to the *Public Sector Equality Duty* (PSED) contained in section 149 of the *Equality Act 2010*, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. A Diversity Impact Assessment (DIA) is a systematic assessment of the likely or actual effects of policies or proposals on social groups with protected characteristics, as defined by the *Equality Act 2010*. With its duties in mind under the *Equality Act 2010* and its PSED, Network Rail had a scoping study undertaken at concept solution review stage to identify potential issues related to the proposed closures and to gather evidence on the potential impacts on people with protected characteristics, in order to determine where more detailed consideration would be required⁸⁵². At the development of proposed solutions stage an Equality and Diversity Overview Report, was completed, which includes a review of the developed proposals⁸⁵³. Based on the findings of the Scoping and Overview reports, a number of full DIAs were carried out and Network Rail has indicated that the design team used that information to incorporate any necessary features or mitigation into the Order proposals⁸⁵⁴.
- 12.5.2.10. Following concerns raised by SCC in relation to S22, Network Rail provided a note setting out who prepared and reviewed the DIAs [5.4.5.16-23].
- 12.5.2.11. Based on the information provided, I am satisfied that Network Rail's reports address the PSED in substance, objectively with an open mind and, for the most part, with sufficient rigour [3.5.5.14-17]. Insofar as concerns remain with respect to the work done, I deal with it below under crossing specific matters.

12.5.3. **S01-Sea Wall**

- 12.5.3.1. Network Rail has identified the route which would be extinguished is used for leisure and recreational purposes as part of the local footpath

⁸⁵² NR/INQ/38.

⁸⁵³ NR/INQ/15 Tab L (NR/INQ/22-in colour).

⁸⁵⁴ NR/INQ/15 Tab M (NR/INQ/22-in colour).

network, a matter which is not disputed [10.1.1.1]. More specifically a number of objectors have indicated that the section of Footpath 013 Brantham between P159 and P160, along the sea wall, provides a valuable vantage point from which surrounding wildlife can be viewed. In my judgement, the proposed route would be unlikely to serve the same purpose, not least as the section of the proposed diversion closest to the estuary would be behind the sea wall and at a lower level.

- 12.5.3.2. However, during the course of the Inquiry and following further consultation with Natural England, Network Rail conceded that if this section of the existing route remained open, it would be unlikely to have an adverse effect on wildlife in the area. Under the circumstances, it proposed a modification to the Order to that effect, which is supported by SCC. [3.5.6.12, 3.9.1.2, 5.4.3.1-14, 8.6.3, 9.1.8.1, 10.1.2] Against this background, I am content that the retention of this section of footpath would not harm local relevant designated sites or the interest features for which the sites were notified, or otherwise harm wildlife. I will base my judgement on the assumption that the Order would be modified to retain the section of Footpath 013 Brantham between P159 and P160. In my view, the retention of this section of footpath and the associated vantage points along it would satisfactorily mitigate the loss of the vantage point provided by the seaward steps up to the crossing [8.6.3.1-2].
- 12.5.3.3. The approaches to S01 are over stiles and up steps, which limit the accessibility of the crossing⁸⁵⁵. Whilst the proposed diversion would not include those features, access would be likely to be restricted in other ways, as set out below.
- 12.5.3.4. When I visited the route between P161 and P162, grass was in evidence on areas which had not be cultivated/rutted by the passage of agricultural vehicles. I consider that it would be possible to establish an unsurfaced, grassed, footpath there, which would provide a reasonable walking surface, notwithstanding the slopes along the route [5.4.3.17].
- 12.5.3.5. However, the majority of the section of the proposed diversion between P160 and P161 would run across an area of agricultural land with rising ground on one side and a reedbed on the other. SCC has provided evidence to show that from time to time this area of land suffers from waterlogging and flooding in parts⁸⁵⁶ [5.4.3.15-16]. Against this background, I consider it unlikely that the footpath design proposed by Network Rail in its Design Guide, which is an unsurfaced footpath consistent with existing ground levels, would be suitable⁸⁵⁷. Furthermore, the same can be said regarding other footpath designs contained within the Design Guide.
- 12.5.3.6. I understand that Network Rail's Design Guide details are intended to be illustrative and that *'exact construction details could vary slightly from*

⁸⁵⁵ NR/INQ/15 Tab L.

⁸⁵⁶ OBJ/29/W3/S01 page 166.

⁸⁵⁷ NR12 page 7.

*those shown following assessment of ground conditions, detailed design and agreement with the Highway Authority*⁸⁵⁸. However, in a number of instances, including at S01, it appears likely to me that the works would need to be significantly different from those illustrated and more extensive. In response to SCC's evidence of waterlogging and flooding, Ms Tilbrook has suggested that in this particular case the detailed design would need to include an assessment of the sources of flooding, consideration of permanent drainage measures and the final design levels of the proposed footpath⁸⁵⁹ [5.4.3.18].

- 12.5.3.7. I consider that little weight is attributable, here and elsewhere, to Network Rail's view that, based on Ms Tilbrook's say so, a decision maker can be confident that concerns raised by experienced PRow officers regarding the feasibility of a route can be resolved by an as yet unspecified solution to be identified at a later design stage, following further investigation [3.5.5.1-3, 13, 3.5.6.7-10]. Furthermore, the weight attributable to Ms Tilbrook's assertion that '*there would be an engineering solution to any water/drainage issues*' at S01 is limited, not least as it appears to be inconsistent with the doubt she expressed concerning the likelihood of resolving a surface water issue arising from an unknown source related to a S03 alternative route proposed by an objector [3.5.6.8, 3.5.8.12, 5.4.3.21, 9.3.4.4.b)]. Network Rail itself emphasises the importance of certainty as to the deliverability of alternative routes [3.5.8.8] and this adds further weight to my finding.
- 12.5.3.8. Based on what I read, heard and seen, in my judgement it would be unlikely to be practical to resolve the drainage/flooding issue between P160-P161 and provide a suitable footpath given the limited width of the strip of land which is the subject of the Order⁸⁶⁰ [5.4.3.20].
- 12.5.3.9. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.3.10. I consider on balance that, even if modified to retain the footpath between P159 and P160, there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S01 and extinguishment of the associated public right of way. I make particular reference to the section between P160 and P161.
- 12.5.3.11. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S01-Sea Wall should be removed from the Order [5.4.3.23].

12.5.4. **S02-Brantham High Bridge**

⁸⁵⁸ NR12 section 2.4.

⁸⁵⁹ NR/32-4-3 para 2.1.4.

⁸⁶⁰ Order plan sheet 37.

- 12.5.4.1. Network Rail has indicated that S02 provides leisure and recreational access to the local footpath network for a small number of people on an infrequent basis, when it is open [3.5.7.1]. The approaches to S02 are over stiles, which limit the accessibility of the crossing.⁸⁶¹ Whilst the proposed diversion would not include those features, it would be likely to be restricted in other ways, as set out below.
- 12.5.4.2. The Order makes provision, amongst other things, for a new section of footpath, P148-P149, to be provided within a narrow strip of land on the western edge of a grassed field set back by a short distance from the top of an adjacent railway cutting [3.5.7.11]. Along much of its length, the western section of this strip of land, which is sunken and uneven, appears to have been subject to subsidence⁸⁶².
- 12.5.4.3. Whilst it has been suggested that the ground instability may have been caused by rabbit activity, ground investigations have not taken place and so the cause is uncertain [10.2.3].
- 12.5.4.4. Ms Tilbrook's view that foot traffic associated with the proposed use would not materially add to loading in that area provides no comfort, as it appears that the ground has collapsed under its own weight and may continue to do so over time [3.5.7.8]. In the absence of ground investigations to determine the cause and appropriate remedial actions, there can be no confidence that it would be practical, within the limited area of land subject of the Order, to undertake the works necessary to stabilise the ground or to establish a suitable footpath that would not become a safety hazard in the future due to continuing ground instability. [5.4.4.3-7]
- 12.5.4.5. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.4.6. I consider on balance, there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S02 and extinguishment of the associated public right of way.
- 12.5.4.7. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S02-Brantham High Bridge should be removed from the Order.
- 12.5.5. **S03-Buxton Wood**
- 12.5.5.1. Network Rail has indicated that S03 provides leisure and recreational access to the local footpath network for a small number of people on an infrequent basis [3.5.8.1]. The approaches to S03 are over stiles, which

⁸⁶¹ NR/INQ/15 Tab L.

⁸⁶² OBJ/29/W3/S02 page 174.

limit the accessibility of the crossing.⁸⁶³ Users would be diverted to Falstaff level crossing, which is similarly restricted.

- 12.5.5.2. The Order plan indicates that the section of the proposed footpath diversion route between P140 and P143 would run close to the western bank of a stream⁸⁶⁴.
- 12.5.5.3. Observations made during my accompanied site visit, with reference to the Order plan sheet 33, indicated that the actual position of the strip of Order land between P142 and P143, which is intended to accommodate the proposed diversion, was largely coincident with the existing stream, as defined by the top of its banks. Even accounting for the inaccuracy of the Order plan identified by Mr Kenning after the accompanied site visit, related to the scale of an electricity pylon base used as a land mark [3.5.8.6], I consider it likely that the proposed footpath would extend beyond the field edge, part way over the adjacent bank of the stream. Furthermore, I saw at the site visit that a number of sections of the field edge bank of the stream was being undermined by the stream. I consider it is unlikely that a route could be established within the bounds of the Order land. Furthermore, even if it could, it is likely that parts of the route would be lost in the future due to erosion caused by the stream.
- 12.5.5.4. Network Rail's note entitled '*Note on S03 Mapping Discrepancies*'⁸⁶⁵, issued after the accompanied site visit, indicates that a topographical survey would need to be undertaken to establish the position of the stream relative to the proposed route of the footpath, before it can be determined if the route could be made suitable and convenient. This confirms the uncertainty associated with the current Order proposal.
- 12.5.5.5. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.5.6. I conclude on balance, there is no reasonable prospect that the Order would make provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S03 and extinguishment of the associated public right of way. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S03-Buxton Wood should be removed from the Order.
- 12.5.6. **S04 – Island**
- 12.5.6.1. Network Rail has indicated that S04 provides leisure access to the local footpath network for a relatively small number of people on a relatively

⁸⁶³ NR/INQ/15 Tab L.

⁸⁶⁴ Order plan sheets 33 and 34.

⁸⁶⁵ NR/INQ/121.

frequent basis, with some use for access to local facilities [3.5.9.2]. The approaches to S04 are over stiles and steps, which limit the accessibility of the crossing.⁸⁶⁶ The proposed diversion would not include those features.

- 12.5.6.2. Objections raised regarding the suitability and convenience of the proposed alternative route relate to: the restricted width of Bentley Road bridge, which would form part of the route; and, a concern that it would be inconvenient to circumnavigate the vehicle restraint barriers either side of the bridge, which SCC plans to install independently of the Order [9.1.10, 10.4.1]. Firstly, I consider that the combination of reasonable forward visibility across the bridge and the kerbed footways on either side of the carriageway crossing the bridge, albeit narrow, provides adequate assurance that pedestrians would be unlikely to come into conflict with passing vehicular traffic. Secondly, I acknowledge that some pedestrians may find it frustrating to have to circumnavigate the proposed vehicle restraint barriers. However, I have no reason to dispute that the existing route is used for leisure purposes as part of the wider footpath network and in this context the distances involved, both in relation to the vehicle barriers and the diversion as a whole, would not be so great as to be inconvenient. As an aside, I understand that the requirements of design standards dictate the position of the proposed barriers parallel to the flow of traffic on the highway [3.5.9.4-7].
- 12.5.6.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.5.6.4. I conclude that the Order would make adequate provision for the suitable and convenient replacement footpath which would be made necessary by the closure of S04 and extinguishment of the associated public right of way.⁸⁶⁷
- 12.5.7. **S08-Stacpool**
- 12.5.7.1. Network Rail has indicated that S08 provides leisure and recreational access to local amenities [3.5.11.1]. The approaches to S08 are over stiles, which limit the accessibility of the crossing.⁸⁶⁸ The proposed diversion would not include those features.
- 12.5.7.2. Local amenities close to S08 appear to comprise a developing nature reserve and an existing canal to the east of the crossing. Whilst S08 provides an east/west route across the railway, it does not automatically follow that having crossed from east to west the destination of users would be the wider public rights of way network to the west, as suggested by the design freeze plan⁸⁶⁹. The only specific origin and destination data before me has been provided by OBJ/34. He confirmed that he parks in the large B1113 layby, which is situated a short

⁸⁶⁶ NR/INQ/15 Tab L.

⁸⁶⁷ OBJ/6.

⁸⁶⁸ NR/INQ/15 Tab L.

⁸⁶⁹ NR26 Appendix F.

distance to the southeast of the highway intersection with Footpath 033 Needham Market, and uses the level crossing to reach the developing nature reserve and canal on the eastern side of the railway. In the absence of any compelling evidence to the contrary, it is conceivable that many, if not all, of those recorded by the census follow the same route.

- 12.5.7.3. The diversion route proposed by Network Rail, as an alternative to S08, would not link the eastern side of the railway to the B1113 layby referred to [3.5.11.7]. The crossing point alternative to S08, promoted by Network Rail in the Order, is a bridge to the northwest, which is crossed by Footpath 031 Needham Market. From there, the most direct route to the layby for pedestrians would be to follow Footpath 031 Needham Market southwest to its intersection with the B1113 and then use the footway along the northeastern side of the highway. The shortest alternative to the use of that footway would comprise a relatively long diversion involving crossing the B1113 twice and following the footpath network to the west of the highway⁸⁷⁰. It would not amount to a convenient alternative either relative to the B1113 footway or the even shorter existing S08 route [9.4.12].
- 12.5.7.4. Network Rail has indicated that the whole of the length of the B1113 footway between Footpath 031 Needham Market and Footpath 033 Needham Market was considered by its commissioned Road Safety Audit (RSA) team, who indicated '*we did not identify any safety issues with this proposed closure. This is because it utilises an existing footway that pedestrians would already be walking along...*' [3.5.11.6]. Taken at face value, such an argument would suggest that existing pedestrian routes do not raise safety issues, irrespective of whether they meet current design standards. I consider that the RSA team's explanation is a poor argument and suggests that no consideration was given to the specific characteristics of that part of the route. I give little weight to the RSA team's finding.
- 12.5.7.5. I have had regard to the reported position of SCC that the B1113 footway is neither a known accident blackspot nor the subject of persistent public complaints, which might otherwise prompt improvement works [3.5.11.7]. However, this historic position is also of little assistance in the absence of any evidence to show the extent to which the footway has been used by pedestrians. I give it little weight.
- 12.5.7.6. I saw that pedestrians emerging from Footpath 031 Needham Market onto the B1113 would do so through a narrow gap in the hedgerow, which restricts visibility, down a short slope and onto the footway, which is narrow, such that the risk of overrunning onto the carriageway is significant. The footway remains narrow for a large part of the route to the layby. Network Rail considers the width to be adequate, citing in support of that view *Inclusive Mobility*, which indicates that '*someone who does not use a walking aid can manage to walk along a passageway*

⁸⁷⁰ NR26 Appendix F.

less than 700 mm wide' [3.5.5.6]. However, the specific guidance provided by Inclusive Mobility on footway and footpath widths does not advocate a width of 700 mm. It identifies 1 metre as an 'absolute minimum', which should be only for short distances, up to 6 metres⁸⁷¹. In addition, the DfT's *LTN 1/04-Policy, Planning and Design for Walking and Cycling* indicates that *'footways less than 1.2 metres wide can be inconvenient and sometimes unpleasant to use, and it is often necessary for pedestrians to step into the carriageway to pass each other.'*⁸⁷²

- 12.5.7.7. From what I saw, the section of the B1113 footway I have referred to is barely 700 mm wide in places. I have no doubt that, as a result of its restricted width and a raised bank along the back edge of the pavement, a pedestrian would be likely to find it necessary to step into the road in order to pass another pedestrian on this footway. The B1113, which has a 60 mph speed limit thereabouts, is described by OBJ/34 as a busy road frequented by heavy goods vehicles (HGVs) [9.4.10], which is an accurate description based on my observations at the accompanied site visit. Stepping into the carriageway would be hazardous. This is all the more the case as intervisibility between pedestrians and drivers approaching in the nearside lane is limited by the vertical curvature of the highway.
- 12.5.7.8. Network Rail has indicated that standard highway design does not require a set-back between the edge of a footway and the carriageway and there are no restrictions on where pedestrians may walk. Nonetheless, from time to time passing vehicles may overhang a footway. To account for this a distance of around 450 mm is usually allowed in highway design between the edge of a carriageway and street furniture, to avoid vehicle wing mirrors/other protrusions from hitting the street furniture⁸⁷³. Due to the restricted nature of the space available to pedestrians on the section of footway I have referred to, it is unlikely that they would be able to step aside to avoid an approaching overhanging vehicle. Whilst the frequency of such events may be limited, pedestrians are likely to feel intimidated by large vehicles passing close by in the nearside lane, particularly when walking towards the layby, as those vehicles approach from behind.
- 12.5.7.9. In my judgement, the proposed route poses significant safety risks for pedestrian users in a number of respects and the characteristics of the route would be likely to deter pedestrians from using it.
- 12.5.7.10. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.7.11. I conclude on balance, there is no reasonable prospect that the Order would make provision for the suitable and convenient alternative made

⁸⁷¹ NR/INQ/15 Tab H para 3.1.

⁸⁷² NR/INQ/15 Tab I page 23 para 4.4.1.

⁸⁷³ NR/32-4-1 page 4.

necessary as a result of the closure of S08. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S08-Stacpool should be removed from the Order.

12.5.8. **S11–Leggetts**

12.5.8.1. In the absence of any compelling evidence to the contrary, I consider that the route which would be extinguished across S11, which is situated in the countryside, is most likely to be used at present for leisure purposes, to access the wider footpath network. The approaches to S11 are over stiles, which limit the accessibility of the crossing.⁸⁷⁴ The proposed diversion would not include those features.

12.5.8.2. Users would be diverted from S11, along existing public rights of way, to cross the railway at Wassicks level crossing [3.5.12]. In my judgement, in this particular case, the associated public rights of way along field paths and rural lanes, would not pose any significant safety risks to users. The C4 ALCRM ranking for Wassicks level crossing suggests that it poses a greater safety risk than S11, which has a C7 ranking, with particular reference to the collective risk ranking of 7. Viewed in isolation this would appear to be contrary to Network Rail's strategic aim of securing the '*safety of rail users and of those interacting with the railway by reason of the crossing points over the railway*'. However, the collective risk ranking is independent of crossing type and is influenced by number of users⁸⁷⁵. The Health & Safety Laboratory in their report '*Review of Network Rail's All Level Crossing Risk Model (ALCRM)*'⁸⁷⁶ to the ORR highlighted, amongst other things, that it is '*particularly sensitive to the number of users and number of trains and less sensitive to other local crossing factors*'. It and the ORR advocates that ALCRM rankings should be considered as part of a wider risk assessment, including qualitative '*narrative*' risk assessments⁸⁷⁷. In this case, users would be diverted from a passive level crossing, where they decide when to cross, to Wassicks level crossing, which has automatic half barriers. Notwithstanding both crossings have the same individual risk ranking, C, it appears to me that Wassicks level crossing offers a higher level of protection in the form of the automatic half barriers. I consider on balance that diversion of users from S11 to Wassicks level crossing would be unlikely to harm their safety.

12.5.8.3. Furthermore, in the context of the purpose served by S11 and having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient.

12.5.8.4. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.

⁸⁷⁴ NR/INQ/15 Tab L.

⁸⁷⁵ NR/27/1 pages 30-31.

⁸⁷⁶ OP/INQ/08 (RSU/08/16).

⁸⁷⁷ NR14 para 24.

- 12.5.8.5. I conclude on balance that the Order would make adequate provision for a suitable and convenient alternative made necessary as a result of the closure of S11 [4.3].
- 12.5.9. **S12–Gooderhams**
- 12.5.9.1. It appears likely that S12 is primarily used for farm access, with limited use for the purposes of leisure/recreational access to the wider footpath network [3.5.13.1]. Whilst the Order would extinguish public rights of way over the crossing, private rights of way would be retained [3.5.13.2, 9.2.4]. The public approaches to S12 are over stiles, which limit the accessibility of the crossing.⁸⁷⁸ The proposed diversion would make use of Cow Creek level crossing, where there are also stiles. [3.5.13.6]
- 12.5.9.2. In the context of the purpose served by S12 and having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient. Furthermore, there is no compelling evidence before me to show that the increase in the number of users of Cow Creek likely to result from the closure of S12 and S13 would necessitate the replacement of existing stiles with kissing gates [9.1.11.1].
- 12.5.9.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.5.9.4. I conclude on balance that the Order would make adequate provision for a suitable and convenient alternative made necessary as a result of the extinguishment of public rights of way over S12.
- 12.5.10. **S13–Fords Green**
- 12.5.10.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S13 may be used for farm access as well as leisure/recreational access to the wider footpath network [3.5.13.1]. The approaches to S13 are over stiles, which limit the accessibility of the crossing.⁸⁷⁹ The proposed diversion would make use of Cow Creek level crossing, where there are also stiles.
- 12.5.10.2. S13 provides an east/west link across the railway. Users who wish to travel from the footpaths local to the east side of S13 to those on its western side would be diverted south along Footpath 020 Bacton and then west along Footpath 018 Bacton to cross the railway at Cow Creek level crossing [3.5.13.7]. On the western side of the railway, pedestrians would have a choice of routes north, either following a new route alongside the railway or an existing route, Footpath 022 Bacton, which runs along the western side of the same field⁸⁸⁰. In my judgement, the latter is not materially different from the former in terms of suitability and convenience. Whilst I have had regard to the view that the

⁸⁷⁸ NR/INQ/15 Tab L.

⁸⁷⁹ NR/INQ/15 Tab L.

⁸⁸⁰ NR26 Appendix F S13.

proposed new footpath along the western side of the railway would, in combination with other existing paths, provide an opportunity for circular walks, I consider that such opportunities are already available using parts of the existing PRow network immediately to the west [3.5.13.17]. In my judgement, the new footpath is not necessary, as a suitable and convenient alternative has already been provided by the existing footpath network.

12.5.10.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.

12.5.10.4. I conclude on balance that a suitable and convenient alternative made necessary as a result of the extinguishment of public rights of way over S13 exists.

12.5.11. **S69–Bacton**

12.5.11.1. Footpath 013 Bacton runs from a housing estate to the west of the railway, across S69 and then through the grounds of Bacton United Football Club to the B1113 Broad Road. It is isolated from the wider footpath network.⁸⁸¹ The approaches to S69 are over stiles, which limit the accessibility of the crossing.⁸⁸² Whilst the proposed diversion would not include those features, it would have other limitations, as set out below.

12.5.11.2. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S69 is potentially used for access to the football club and may provide leisure/recreational access to the local PRow network [3.5.13.1]. I consider it likely that the primary purpose for which S69 is used is as a link between residential development to the west and the football ground to the east of the railway, not least as Footpath 013 Bacton is isolated from other footpaths and the vast majority of users recorded during Network Rail's census survey were children. Furthermore, the census survey was undertaken outside the football season, during which the frequency of use of the crossing may well be significantly higher than that recorded. For this reason, I give little weight to any reliance placed by Network Rail on the level of use suggested by both the census results and the levels of use derived from consultation responses, which were even lower, as justification for limited mitigation measures [3.5.13.10, 5.4.10.10].

12.5.11.3. Users would be diverted from the grounds of Bacton United Football Club, on the eastern side of S69, northwards along the B1113 Broad Road, turning west along Pound Hill and crossing the railway using an existing underpass; and, then south using roads that serve the housing estate close to the western side of S69.

12.5.11.4. Network Rail suggests that the proposed route along Broad Road, utilising highway verges, between the football ground and its junction

⁸⁸¹ NR26 Appendix F S69.

⁸⁸² NR/INQ/15 Tab L.

with Pound Hill, would be suitable for use by pedestrians diverted from S69, as it is used at present: as a link between Footpath 013 Bacton and Footpath 004 Cotton; and, for pedestrian access between properties on Broad Road and amenities/facilities in Bacton Village. [3.5.13.17]⁸⁸³ I give little weight to this suggestion, as:

- a) Firstly, there is no survey evidence before me to support Network Rail's assertions regarding current use;
- b) Secondly, Network Rail suggests that the desire line between Footpath 004 Cotton and public rights of way to the west would be likely to be along Pound Hill⁸⁸⁴. I consider it likely that residents of the housing estates adjacent to Pound Hill would also be likely to use that route to Footpath 004 Cotton, as there are footways along much of the route, rather than Footpath 013 Bacton and the B1113, where there are not; and,
- c) Thirdly, the number of pedestrians diverted from S69 may well be significantly higher than levels associated with the limited number of properties along this section of the B1113, the largest cluster of which are much closer to the Pound Hill junction than the football club.

12.5.11.5. Furthermore, I consider that the desire line of pedestrians travelling between Pound Hill and the football club along the proposed diversion route would take them along the western side of Broad Road. The Order does not make provision for a footway and in my view, there is unlikely to be scope to do so within the bounds of the highway. Even if planting overhanging the verge were to be cut back, as suggested by Network Rail, based on what I have read, heard and seen, I consider that the width of verge available for pedestrians would, in parts, falls short of both the 1.0 metre minimum width of footpath advocated by '*Inclusive Mobility*', to which I have already referred, and the 0.7 metre claimed by Network Rail [3.5.13.13].

12.5.11.6. In common with the findings of RSAs produced on behalf of Network Rail, SCC's (RSA(SCC)) and the Ramblers' Association's evidence on road safety (RS(R)), I consider it is likely that pedestrians would find it necessary to walk along the carriageway for parts of the route, in relation to which the speed limit increases from 30 to 40 mph towards the football club⁸⁸⁵.

12.5.11.7. Furthermore, given the likely purpose of trips would be to take part in or otherwise attend group activities at the football club, it is foreseeable that some pedestrians would be travelling in groups and that they may comprise groups of children. Network Rail's *Diversity Impact Assessment-Scoping Report* recognises that the lack of a footway poses a safety risk, particularly for children⁸⁸⁶.

⁸⁸³ NR/32-4-2 para 3.3.2.

⁸⁸⁴ NR/32-1 para 2.8.7.

⁸⁸⁵ OBJ/29/W5, OBJ/36/W10/1.

⁸⁸⁶ NR/INQ/15 Appendix M Diversity Impact Assessment S69 Bacton page 13.

- 12.5.11.8. I consider that the likelihood of pedestrians coming into conflict with vehicles thereabouts would be significantly increased by the proposal, to the detriment of the safety of those diverted from S69. The risk would be exacerbated after dark, due to the lack of street lighting, which would otherwise be likely to aid the visibility of pedestrians. In my judgement, this is a compelling reason for concluding the proposed diversion would not amount to a suitable alternative required as a result of the closure of S69.
- 12.5.11.9. The majority of development within Bacton is accessed off a section of Pound Hill that includes the underpass, which forms part of the proposed diversion route. Due to its relatively central location within the village, I consider that the underpass is likely to be used frequently by pedestrians. Those approaching the underpass are most likely to do so along the northern side of Pound Hill, where scope for off-carriageway routes on footways and/or verges is greater, as is forward visibility. Either side of the underpass, Network Rail proposes to replace the verge with footway, to provide an off-carriageway standing area for pedestrians to pause before entering the underpass [3.5.13.9, 5.4.10.8]. Whilst the route through the underpass itself does not include a kerbed footway, the distance is relatively short [3.5.13.14]. Given this and the forward visibility from either side, I consider it likely that pedestrians would be able to cross without coming into conflict with vehicles. In my view, the use of the underpass would be unlikely to harm the safety of pedestrians diverted from S69. [5.4.10.9-11, 8.6.15]
- 12.5.11.10. However, SCC has indicated that the carriageway which passes through the underpass is prone to flooding. Network Rail does not dispute that matter or that flooding may be a relevant consideration when determining whether a route is a suitable and convenient replacement [3.5.13.12, 5.4.10.12-13]. As it stands, the Order would result in users being diverted from the existing route, in relation to which there is no evidence of flooding, to an alternative which would be likely to be unusable for some of the time due to flooding, effectively restricting pedestrian access between the football club and residential areas to the west of the railway [8.6.14]. Whilst the flooding issue may be capable of resolution there is no compelling evidence to show that it would be resolved in the event that S69 is closed [3.5.13.12]. Although aware of the issue, SCC has not resolved it in the past. There is currently a dispute between SCC and Network Rail as to the likely cause of the problem and who is liable for its resolution; SCC maintaining that Network Rail should investigate the matter as the issue lies on Network Rail land, which is not accepted by Network Rail [5.4.10.12]. Furthermore, I am not convinced that the problem would have to be resolved as part of the conditioned works at the underbridge associated with an extant planning permission for residential development in Bacton. The associated works appear to be limited to traffic management and provision of a footway at the underbridge [5.4.10.9]. In any event, there is no guarantee that that planning permission would be implemented. This adds further weight to my finding concerning the suitability of the proposed diversion route.

- 12.5.11.11. Under the terms of the Order a second alternative route would be available, which would involve following new and existing public rights of way south and then north having crossed the railway at Cow Creek crossing⁸⁸⁷. However, the additional travel distance would be significant and in the context of the purpose for which S69 is likely to be primarily used, it would not amount to a convenient alternative. [3.5.13.18]
- 12.5.11.12. I conclude on balance, there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S69. Furthermore, with reference to the PSED, it seems likely that there are those with protected characteristics, in this case children, who would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population). This adds further weight to my finding.
- 12.5.11.13. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S69-Bacton should be removed from the Order.

12.5.12. **S16-Gislingham**

- 12.5.12.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S16 is likely to be used to access the wider PRow network. Whilst the approaches to S16 are gated, the proposed diversion would utilise an underpass.⁸⁸⁸
- 12.5.12.2. Users of S16 would be diverted using a mix of new bridleway as well as an existing BOAT and highway, crossing the railway at an underpass.
- 12.5.12.3. I consider that, in the context of the purpose served by S16 and having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient.
- 12.5.12.4. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.5.12.5. I conclude on balance that the Order would make adequate provision for a suitable and convenient alternative made necessary as a result of the closure of S16.

12.5.13. **S17-Paynes**

- 12.5.13.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S17 is likely to be used to access the wider PRow network. The approaches to S17 include steps, which limit accessibility.⁸⁸⁹ Steps would not be a feature of the proposed diversion.

⁸⁸⁷ NR26 Appendix F S69.

⁸⁸⁸ NR/INQ/15 Tab L.

⁸⁸⁹ NR/INQ/15 Tab L.

- 12.5.13.2. Users of S17 would be diverted using a mix of new and existing footpaths, crossing the railway at an overbridge.
- 12.5.13.3. I consider that, in the context of the purpose served by S17 and having regard to the additional travel time likely to be associated with the diversion, this alternative would not be inconvenient.
- 12.5.13.4. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.5.13.5. I conclude on balance that the Order would make adequate provision for a suitable and convenient alternative made necessary as a result of the closure of S17.
- 12.5.14. **S23-Higham**
- 12.5.14.1. In the absence of any compelling evidence to show otherwise, I consider it likely that S23 would be used for leisure purposes, linking the wider footpath network to the north and south of the railway [3.5.18.2-3].
- 12.5.14.2. In this case, extinguishment of the existing public right of way would extend for some distance to the north and south of the railway⁸⁹⁰. Pedestrians would be diverted along Higham Road, between its intersections with Footpath 001 Higham and the A14 slip road, crossing the railway at an existing bridge. Network Rail estimates that the proposed route would be shorter than the existing and considers that there is verge available along the route for use by pedestrians [3.5.18.7]. However, as observed by the RSA(SCC) and the RS(R), I saw that some sections of verge are unsuitable for pedestrians being steep, high or narrow⁸⁹¹ [3.5.2.4]. Network Rail acknowledges that some works may be required to improve the condition of the verges to make them suitable for pedestrians and pedestrians may find it necessary to cross from one side of the road to the other in certain locations to find a usable section of verge [3.5.18.9, 5.4.6.4].
- 12.5.14.3. I acknowledge that in this area, where the footpath network is disjointed, pedestrians would be likely to use parts of the highway network as links between footpaths⁸⁹². However, there is no evidence before me to show that the route promoted by Network Rail to mitigate the closure of S23 is currently used for that purpose [5.4.6.5]. Under these circumstances, I consider that little weight is attributable to the absence of any recorded accidents on Higham Road in the last 5 years, referred to by Network Rail⁸⁹³.
- 12.5.14.4. Network Rail has estimated that it would take around 7.5 minutes to walk along the Higham Road section of the proposed diversion and, based on its traffic count data, during such a period 9 vehicles would be

⁸⁹⁰ NR26 Appendix F S23.

⁸⁹¹ OBJ/29/W5 page 4 (196), OBJ/36/W10/1 page 14.

⁸⁹² NR/32/4/2 page 6.

⁸⁹³ NR/32/4/2 page 6 para 3.1.3.

likely to pass by [5.4.6.6]. Higham Road has a posted speed limit of 60 mph and an 85%tile speed of around 39 mph was derived from a speed survey carried out for Network Rail close to the railway bridge, to the north of the War Memorial.

- 12.5.14.5. Close to the War Memorial there is a horizontal bend in Higham Road, which would be likely to greatly restrict intervisibility between pedestrians and drivers approaching around the bend. In this location the verge on the northbound side of the highway is narrow. I consider it is unlikely that this verge could be made suitable for pedestrian use and pedestrians would find it necessary to walk on the carriageway or cross over to the other side of the highway [3.5.18.9, 5.4.6.2].
- 12.5.14.6. Network Rail's RSA did not identify any issues with this section of Higham Road [3.5.18.9]. However, the brief provided to those auditors, which included plans of proposed diversion routes, did not identify that use would be made of this particular section of Higham Road as part of a diversion route [5.4.6.3]. Furthermore, the audit did not identify the potential difficulties associated with verge walking, acknowledged above by Network Rail. These factors cast significant doubt over whether this section of road was considered by the auditors, notwithstanding Ms Tilbrook's understanding that it was. I give greater weight to the assessments contained within the RSAs undertaken on behalf of SCC and the Ramblers' Association, which have identified a number of hazards, consistent with my own findings⁸⁹⁴ [8.6.6.1].
- 12.5.14.7. I consider that, due to the limited intervisibility as well as the likely speed and frequency of passing traffic, walking in the carriageway and/or crossing the road close to the War Memorial would be hazardous. I conclude that the proposed closure of S23 would be likely to result in pedestrians using a route along Higham Road which would pose a significant risk to their safety.
- 12.5.14.8. I share the concerns raised by the Ramblers' Association with respect to the proposed point at which pedestrians would be encouraged, through the provision of a footway and crossing infrastructure⁸⁹⁵, to cross the A14 slip road, close to its junction with Coalpit Lane where there is a history of accidents. However, it appears to me that it would be possible to move the crossing point away from the junction along the highway verge without affecting private land not included within the scope of the Order. Therefore, I agree with Network Rail that this particular matter could be reviewed and resolved at the detailed design stage [3.5.18.12, 5.4.6.12-14, 8.6.6.1].
- 12.5.14.9. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).

⁸⁹⁴ OBJ/29/W5 page 4 (196), OBJ/36/W10/1 page 14.

⁸⁹⁵ NR/32/4/2 page 9.

12.5.14.10. I conclude on balance, there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S23. I refer in particular to the proposed use of Higham Road. I conclude that the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S23-Higham should be removed from the Order.

12.5.15. ***S24-Higham Ground Frame***

12.5.15.1. It appears that the route which would be extinguished across S24 is likely to be used at present for leisure purposes, linking the wider footpath network to the north and south of the railway [3.5.18.2-3]. More specifically, it appears to me that S24 is likely to facilitate access between Footpath 006 Barrow to the south of the railway and Footpaths 001, 002 and 013 Higham to the north [9.13.5]⁸⁹⁶. Currently northbound users, having crossed the railway at S24, would be likely to make their way along the off-slip road on the southern side of the A14, crossing the A14 using the Coalpit Lane overbridge, before joining up with Footpaths 001, 002 or 013 Higham. In practice, it is unlikely that they would follow a more direct route across the A14, due to traffic levels and speed [9.13.6]. The approaches to S24 are over stiles, which limit the accessibility of the crossing.⁸⁹⁷ The proposed diversions would have other limitations, as set out below.

12.5.15.2. The Order includes 2 diversion routes which are intended to mitigate the impact of the loss of S24, one to the west and the other to the east. Of the 2, I consider that only the route to the west would fulfil the purpose of S24 described above. That western route would provide comparable north/south connectivity, linking the local PRow networks to the north and south of S24 via the Coalpit Lane overbridge. Furthermore, insofar as the closure of S24 would reduce the potential for circular walks in the locality, the western diversion from S24 would also facilitate circular walking in the area between the local footpath networks on either side of Coalpit Lane.

12.5.15.3. In contrast, the proposed diversion to the east would extend from Footpath 006 Barrow, on the south side of the railway, along a new public right of way route around 2.5 Km long to an entirely different section of the wider footpath network on the northern side of the railway, in the vicinity of Risby rather than Higham [3.5.18.15]⁸⁹⁸. Under these circumstances, I consider that, firstly, it would serve a wholly different purpose to that of the existing route and so would not amount to an alternative [3.5.18.17]. Secondly, it would not amount to a suitable and convenient replacement made necessary as a result of the closure of S24. Furthermore, in my view, nor could it reasonably be said to fall within the scope of Phase 1 of Network Rail's *Anglia CP5 Level Crossing Reduction Strategy*, insofar as it seeks to include 'nearby alternative

⁸⁹⁶ NR26 Appendix F S24.

⁸⁹⁷ NR/INQ/15 Tab L.

⁸⁹⁸ NR/32-2 page 224.

routes utilising existing bridges as a means of crossing the railway’.

[9.13.1-12]

- 12.5.15.4. The western route from S24 would take users on the southern side of the railway from Footpath 006 Barrow to Coalpit Lane. They would be expected to: cross the lane to join Footpath 005 Higham, travelling westwards to Higham Lane; walk northwards along the lane, over the railway, to the junction with the A14 slip road; and, travel eastwards along the slip road to the junction with Coalpit Lane, before turning north across a bridge over the A14 to link up with Footpaths 001, 002 and 013 Higham.
- 12.5.15.5. However, between its junctions with the eastern end of Footpath 005 Higham and the A14 slip road, Coalpit Lane appears to offer a route which would be far shorter, more direct and involve less roadside walking than the relatively circuitous alternative proposed by Network Rail. As a result of these factors, I consider that users would be likely to regard the Order route as inconvenient and, as observed by the RSA undertaken on behalf of the Ramblers’ Association⁸⁹⁹, would be encouraged to use Coalpit Lane as a link between footpaths to the north and south of the railway [3.5.18.14]. That section of Coalpit Lane poses a number of risks to the safety of walkers. As identified by Network Rail’s RSA, pedestrians would be at risk of colliding with vehicles, due to a combination of: a lack of verges suitable for pedestrians, resulting in users being forced to walk in the carriageway; high vehicle flows; high vehicle speeds; and, limited forward visibility in places⁹⁰⁰ [8.6.6.1]. Those issues persuaded Network Rail not to promote that route in the Order, which does not include any measures to effectively mitigate those risks. Nevertheless, it does not automatically follow that it would not be used by pedestrians, who may well not appreciate the risks until it is too late. I conclude that the proposed closure of S24 and diversion to/from the west would be likely to result in pedestrians using a route along Coalpit Lane which would pose a significant risk to their safety [8.6.6.2].
- 12.5.15.6. The proposed diversion to the west of S24 includes the use of Footpath 005 Higham which intersects with Coalpit Lane at its eastern end. Intervisibility between pedestrians emerging from Footpath 005 Higham on to Coalpit Lane and drivers approaching from the south is limited by the horizontal curvature of the lane and the roadside hedge. However, I am content that the level of intervisibility there could be made satisfactory by cutting back the hedgerow, as suggested by SCC and Network Rail, action which, to my mind, would fall within the remit of the Highway Authority for this existing route. This would be sufficient to allow a pedestrian to assess when it is safe to cross from a vantage point on the highway verge and provision of a more formal pedestrian refuge would not be necessary. [3.5.18.13, 5.4.6.10-11]
- 12.5.15.7. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be

⁸⁹⁹ OBJ/36/W10/1 para 4.35.

⁹⁰⁰ NR/32-1 para 2.14.30, OBJ/36/W10/1 para 4.36.

disproportionately affected (over and above the effects likely to be experienced by the rest of the population).

12.5.15.8. I conclude on balance there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S24 and that therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S24-Higham Ground Frame should be removed from the Order.

12.5.16. ***S25–Cattishall***

12.5.16.1. S25 provides a pedestrian link between: an unnamed road on the southern side of the railway, which, until recent years, ran through an area of largely undeveloped land to its junction with Mount Road; and, Green Lane to the north of the railway, which runs towards Great Barton through the countryside. This route forms part of the National Cycle Network, Sustrans route 13, albeit that cyclists are required to dismount when crossing [3.5.19.15]⁹⁰¹. Over recent years the land immediately to the south of the crossing has been under residential development by Taylor Wimpey, forming phases 1 and 2 of the allocated Moreton Hall urban extension (the Taylor Wimpey site) [7.2.2.16]. I consider that it would be reasonable to regard residents of the Taylor Wimpey site as likely existing users of S25, a view shared by Network Rail [3.5.1.16, 3.5.19.20].

12.5.16.2. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, whilst S25 is likely to be primarily used for leisure and recreational access to the local area, there is some limited evidence of use for other purposes, such as commuting [3.5.19.1]. The Ramblers' Association has also indicated that users include people travelling to work⁹⁰². The approaches to S25 are gated.⁹⁰³

12.5.16.3. The proposed diversion would direct users on the southern side of S25 westwards along highways, which include cycleways and footways, through an existing residential area to the west of the Taylor Wimpey site to cross the railway at a currently disused underpass. There is agricultural land to the north of the underpass, which has been allocated for residential development as part of a site known as North East Bury St Edmunds urban extension (NEUE)⁹⁰⁴. At the time of the Inquiry, the associated developer was preparing to submit a planning application for the North East site [7.2.2.16]. For the avoidance of doubt, in my view, future residents of an unconsented development do not constitute 'existing users' of the crossing [3.5.1.16, 5.4.7.6-7]. The diversion route would run eastwards from the underpass towards S25, between the railway and proposed residential area, along a new bridleway.

⁹⁰¹ NR/32-1 section 2.15.

⁹⁰² OBJ/36/W5/1 para 3.

⁹⁰³ NR/INQ/15 Tab L.

⁹⁰⁴ NR26 Appendix F S25-Cattishall, OBJ/28/W1/1 page 6 Figure 2.

- 12.5.16.4. No origin and destination surveys have been undertaken by Network Rail to support the contention that the proposed crossing would benefit existing users [3.5.19.20]. I consider that, for a limited number of existing properties located close to the underpass, the proposed diversion route would be likely to provide a shorter route to the start of Green Lane and the countryside beyond, than S25. However, for users travelling to or from locations further to the west on the southern side of the railway, the proposed diversion would be unlikely to make a significant difference to the distance travelled. Furthermore, for residents of the Taylor Wimpey site, who are currently able to access the start of Green Lane and the countryside beyond directly across S25, the diversion would add up to around 1 Km to the route [3.5.19.18]. In these particular circumstances, I share the concern of SCC that this additional distance would be likely to deter some of those users from making the journey [5.4.7.1-4]. The proposed diversion would also add to the distance between destinations further to the south, such as employment at Rougham Industrial Estate, and the north side of S25.
- 12.5.16.5. Furthermore, the *Manual for Streets* (MfS) indicates that, in order to encourage and facilitate walking, pedestrians need to feel safe. Pedestrians generally feel safe from crime where, amongst other things, *'they cannot be surprised (e.g. at blind corners) and they cannot be trapped (e.g. people can feel nervous in places with few entry and exit points, such as subway networks)'*⁹⁰⁵. In comparison with the open aspect of the S25 level crossing, I saw that the proposed alternative involves a narrow underpass, with stepped abutment walls where people may conceal themselves, largely screened from view from the nearest neighbouring properties by planting. These characteristics would be likely to deter some people from using it, due to safety concerns. Whilst the use of the same underpass is promoted by the local planning authority as a proposed north/south connection to serve the proposed NEUE, the Concept Statement and Masterplan for that development site anticipate that it would be one of 2 routes, the other being S25 [3.5.19.16]⁹⁰⁶. Therefore, providing users with a choice, which would not be available under the terms of the Order [8.6.7.3]⁹⁰⁷.
- 12.5.16.6. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.16.7. I conclude on balance, there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative made necessary as a result of the closure of S25 and that therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S25-Cattishall should be removed from the Order.

⁹⁰⁵ NR/INQ/15 Tab J para 6.3.18.

⁹⁰⁶ OBJ/28/W1/2 Appendix 4 page 13 para 1.15 and page 16 para 3.38.

⁹⁰⁷ OBJ/28/W1/2 Appendix 4 page 13 para 1.15.

12.5.17. S27-Barrell's and S28-Grove Farm

- 12.5.17.1. S27 and S28 are neighbouring level crossings on the outskirts of Thurston⁹⁰⁸. Network Rail has indicated that, based on the location of the crossing points and the feedback from public consultation, both S27 and S28 are used to access the wider footpath network, S27 may also be used to access property [3.5.20.1]. The approaches to these crossings are over stiles and there are some steps, which limit the accessibility of the crossings.⁹⁰⁹ Whilst the proposed diversions would not include such features, they would be limited in other respects, as set out below.
- 12.5.17.2. Users would be diverted along a mix of new and existing footpaths as well as along rural roads without footways. The diversion route to the west of S27/S28 would involve crossing the railway at a humped back bridge on Barrell's Road and the route to the east of the level crossings would include a humped back road bridge to the southeast of Grove Farm (the Grove Farm Bridge).
- 12.5.17.3. Network Rail has not provided any data concerning current use of the road bridges by pedestrians and, whilst data gathered regarding the crossings indicate use, it is not determinative of the levels of use [3.5.5.8]. Having regard to these matters, I consider that proposed diversions have the potential to result in a material increase in pedestrian use of the road bridges and, given this change of circumstances, I attribute little weight to the absence of any recorded accidents in the vicinity of the bridges in the recent past⁹¹⁰.
- 12.5.17.4. Whilst the RSA undertaken on behalf of Network Rail did not identify any issues⁹¹¹, safety concerns have been raised by SCC and the Ramblers' Association, with particular reference to the sections of the routes over the 2 road bridges [3.5.20.12, 5.4.8.1-2, 8.6.8.7-8].
- 12.5.17.5. Network Rail has estimated that forward visibility for a driver approaching Barrell's Road bridge may fall to around 33 metres, due to the vertical curvature of the road⁹¹². That would equate to the sight stopping distance required for an 85%tile speed of around 25 mph, with reference to MfS. However, it appears to me that the 85%tile speed of vehicles approaching the bridge is likely to be higher than 25 mph, given that the ATC data provided by Network Rail indicates that the mean speed ranges from 23.7-24.7 mph⁹¹³ and the posted speed limit is 60 mph [5.4.8.6-8]. In my judgement, even if some allowance is made for the longitudinal gradient of the highway, the available stopping sight distance would be likely to fall short of the guidance set out in MfS. Therefore, a driver approaching one side of the bridge may well have

⁹⁰⁸ NR26 Appendix F S27 and S28.

⁹⁰⁹ NR/INQ/15 Tab L.

⁹¹⁰ NR/32-1 para 2.16.36.

⁹¹¹ NR/32-1 para 2.16.31, NR16.

⁹¹² NR/32-1 para 2.16.38 and NR/INQ/103.

⁹¹³ [Inspector's note: NR/INQ/96 confirms that the 24.7 mph speed quoted in NR/32-1 para 2.16.38 and NR/32/4/9 para 2.3.7 was erroneously identified as the recorded 85%tile speed. It is the recorded mean speed. Consequently, I give little weight to the conclusions based on that data.

insufficient time to stop to avoid a collision with a pedestrian once seen on the other side of the bridge. This is consistent with the concern expressed by the RSA(SCC).

- 12.5.17.6. Indicative details set out in Network Rail's Design Guide identify that verges would be removed from the sides of the carriageway over the Barrell's Road bridge and white lining edge marking would be provided on either side of the carriageway, intended to delineate a 'safe space for pedestrians' on the eastern side of the bridge. In addition, the carriageway would be widened on the approaches to the bridge to provide a safe standing area for pedestrians, overgrown hedges would be cut back and consideration may be given to warning signage [3.5.20.12, 5.4.8.4].⁹¹⁴
- 12.5.17.7. However, there is barely enough room between the parapet walls for 2 cars to pass. Whilst this may not be a frequent occurrence, it is foreseeable that vehicles would routinely encroach on the 'pedestrian safe space', due to concerns regarding the potential for on coming vehicles in the opposite direction, particularly given the limited forward visibility and limited room to pass. As a result, in my judgement, the indicative proposals would be unlikely to safeguard pedestrians; a concern also identified by the RS(R). Retention of the verges would also be unlikely to do so, as there is some evidence of over-running by vehicles⁹¹⁵ [5.4.8.5, 8.6.8.1]. Furthermore, it would also be impracticable to provide a kerbed footway for pedestrians, contrary to the view of the RS(R), as vehicles approaching from opposite directions would be using the same road space with limited forward visibility, giving rise to a much greater risk of collisions between vehicles or with the parapet wall opposite the footway. I consider it is unlikely that this matter could be satisfactorily resolved at detailed design stage. [3.5.20.13-14]
- 12.5.17.8. Network Rail has confirmed that although no traffic data was collected on the Grove Farm Bridge, it is anticipated that traffic volumes and speeds will be similar to those at Barrell's Road bridge, due to the location and road alignment⁹¹⁶. In my view, this is reasonable and, based on what I saw, forward visibility is also likely to be comparable. Whether or not the same measures are proposed, I consider that my findings concerning road safety at Barrell's Road bridge are also applicable to Grove Farm Bridge. [5.4.8.3]
- 12.5.17.9. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.17.10. I conclude on balance, there is no reasonable prospect that the Order would make provision for the suitable and convenient alternative(s) made necessary as a result of the closures of S27 and S28 and that

⁹¹⁴ NR12 pages 30-31.

⁹¹⁵ NR/32-4-9 para 2.3.6

⁹¹⁶ NR/32-4-9 para 2.3.7.

therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S27-Barrell's and S28-Grove Farm should be removed from the Order.

12.5.18. **S29–Hawk End Lane**

- 12.5.18.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S29 is used, when open, to access areas of Elmswell north and south of the railway, including for the purposes of leisure access to the footpath network and commuting [3.5.21.1]. The approaches to S29 are over stiles, which limit the accessibility of the crossing.⁹¹⁷ The proposed diversion would not include such features.
- 12.5.18.2. Users would have a choice of diversion either: to the west of S29, using new and existing footpaths/footways to cross the railway at an existing underpass linked to the wider footpath network; or, to the east of S29 using existing footways to cross the railway at a highway level crossing within Elmswell, which is protected by automated barriers⁹¹⁸. It appears to me that the crossing points associated with the diversions offer pedestrians a greater level of protection than S29, which is a passive level crossing, when they decide when to cross. Furthermore, I consider that in the context of the purposes served by S29, the convenience of users would be assured through the availability of 2 alternatives: one leading through the built up area of Elmswell, which would be more likely to be of use to commuters; and, the other connecting to the wider footpath network, which would be more likely to be required for leisure.
- 12.5.18.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.5.18.4. I conclude on balance that the Order would make adequate provision for the suitable and convenient alternatives made necessary as a result of the closure of S29.

12.5.19. **S30–Lords No 29**

- 12.5.19.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S30 is used to access the wider footpath network [3.5.22.2]. The approaches to S30 are over stiles and steps, which limit the accessibility of the crossing.⁹¹⁹ The proposed diversion would not include such features.
- 12.5.19.2. Users would be diverted along new footpaths either side of the railway to cross at an existing footbridge [3.5.22.4].
- 12.5.19.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.

⁹¹⁷ NR/INQ/15 Tab L.

⁹¹⁸ NR26 Appendix F S29.

⁹¹⁹ NR/INQ/15 Tab L.

- 12.5.19.4. I conclude on balance that, in the context of the purpose served by S30, the proposed diversion would provide a suitable and convenient alternative.
- 12.5.20. **S31-Mutton Hall**
- 12.5.20.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S31 is used to access the wider footpath network [3.5.23.1, 5.4.9.6]. The approaches to S31 are over stiles, which limit the accessibility of the crossing.⁹²⁰ Whilst the proposed diversion would not include such features, it would be limited in other respects, as set out below.
- 12.5.20.2. Users would be diverted along a mix of new and existing footpaths to cross the railway at a road bridge located to the east of S31⁹²¹ [3.5.23.3].
- 12.5.20.3. Indicative details set out in Network Rail's *Design Guide* identify that verges would be removed from the sides of the carriageway over the bridge and white lining edge marking would be provided to delineate a 'safe space' for pedestrians along the western side of the carriageway over the bridge. In addition, the carriageway would be widened on the approaches to the bridge to provide a safe standing area for pedestrians, overgrown hedges would be cut back and warning signage erected.⁹²²
- 12.5.20.4. Network Rail has not provided any data concerning current use of the road bridge by pedestrians and, whilst data gathered regarding the crossing itself indicates use, Network Rail has confirmed that it is not determinative of the levels of use [3.5.5.8]. Having regard to these matters, I consider that the proposed diversion has the potential to result in a material increase in pedestrian use of the road bridge and, given this change of circumstances, I attribute little weight to the absence of any recorded accidents in the vicinity of the bridge in the recent past.⁹²³
- 12.5.20.5. Whilst the RSAs undertaken on behalf of Network Rail and SCC did not identify any issues, safety concerns have been raised by the Ramblers' Association and SCC's Rights of Way Officer, with particular reference to the proposed road bridge crossing [3.5.23.4-7, 5.4.9.5, 8.6.9.1]. For the reasons set out below, I consider the concerns raised to be well founded.
- 12.5.20.6. Whilst the RS(R) acknowledges that the stopping sight distance available to drivers approaching along the highway would be likely to meet highway design standards, it expresses the concern that drivers may not avoid the proposed 'safe space' for pedestrians, for fear of coming into

⁹²⁰ NR/INQ/15 Tab L.

⁹²¹ NR26 Appendix F S31.

⁹²² NR12 pages 31-32.

⁹²³ NR/32-1 para 2.19.20.

conflict with on-coming traffic, thereby placing pedestrians at risk⁹²⁴.

[3.5.23.4-5]

- 12.5.20.7. Across the road bridge the alignment of the highway is southwest/northeast. However, to the south the highway curves to the south and to the north of the bridge it curves to the east. As a result, intervisibility between a pedestrian deciding whether to cross the bridge and vehicles approaching from both the south or north is limited, as illustrated in photographic evidence submitted⁹²⁵. Furthermore, the crossing is relatively long, as the railway bridge parapet walls extend for some distance either side of the railway. As a consequence, it is foreseeable that while crossing, a pedestrian would be passed by a vehicle(s), which could not be seen to be approaching when the decision was taken to cross the bridge.
- 12.5.20.8. In my judgement, vehicles approaching from the north would be likely to be positioned towards the centre of the road as they round the bend onto the bridge, due to the horizontal curvature of the highway. Furthermore, delineation of the 'safe space for pedestrians' alongside the western parapet of the bridge would leave barely enough room for a northbound car to pass without crossing the central dashed white line separating opposing traffic flows⁹²⁶. Larger vehicles, of which there are likely to be a significant number having regard to Network Rail's ATC data⁹²⁷, would be likely to encroach either on the 'safe space' or the opposing lane. Whilst a northbound driver, having seen a pedestrian in the 'safe space', would be likely to choose the latter initially, the vehicle may well be forced to encroach on the 'safe space' occupied by a pedestrian, if met by a south bound vehicle. It would be unlikely to be practical to provide, as suggested by the RS(R), a raised kerb footway instead of the delineated 'safe space'. A raised kerb would be likely to allow larger vehicles no option other than to move into the opposing lane giving rise to a significant risk of conflict with on-coming vehicles. I consider that the proposed closure of S31 would be likely to result in pedestrians using a route which would pose a significant risk to their safety and this is not a matter which is likely to be resolved at the detailed design stage.
- 12.5.20.9. With reference to the PSED, and having regard to the submission made, I consider it unlikely that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population).
- 12.5.20.10. I conclude on balance, there is no reasonable prospect that the Order would make provision for the suitable and convenient alternative made

⁹²⁴ OBJ/36/W10/1 paras 4.79-4.80.

⁹²⁵ [Inspector's note: An indication of this restriction is provided by Figure 38 of Network Rail's NR12 Design Guide, albeit the sightline would be likely to be marginally better than illustrated, as a pedestrian would be positioned at the side of the road and Network Rail intends to cut back overgrown hedges at the northern end of the bridge. See also OBJ/29/W4/S27/S31 photos GF 7 and 8, OBJ/36/W2/1 photo D.]

⁹²⁶ OBJ/36/W2/1 photo B.

⁹²⁷ NR/32-2 Tab 1 page 22.

necessary as a result of the closure of S31 and that therefore, the requirements of section 5(6) of the TWA would not be met and provisions related to the closure of S31 should be removed from the Order.

12.5.21. **S22-Weatherby**

12.5.21.1. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S22 is used to access properties and amenities on both sides of the railway. This is supported by a number of others [9.6.6, 9.7.1, 9.8.2]. The approaches to S22 are gated.⁹²⁸

12.5.21.2. Users would be diverted along existing public highways, including: Cricket Field Road; New Cheveley Road, which includes an underpass railway crossing; Green Road; and, Granary Road.

12.5.21.3. Whilst S22 and the proposed diversion route are both available to existing users, a large number choose to use S22; around 400 people per day on average according to Network Rail's census [9.6.2]. To my mind, although this indicates a preference for the S22 route, it does not automatically follow that the proposed diversion would not amount to a suitable and convenient alternative, a matter to which I turn to now [8.4.6, 8.6.5.7].

Travel time

12.5.21.4. Network Rail has estimated that the maximum diversion route, from one side of the crossing to the other, is around 870 metres [3.5.17.11]. I acknowledge that, depending on origins/destinations, the additional distance that some users would have to travel may be shorter [5.4.5.5]. However, that would not be the case for those travelling between Willow Crescent or Sovereign Court, which are residential streets immediately to the south east of the railway, and the residential area, local facilities or the section of the town centre to the north of S22 [3.5.17.13]. Network Rail has not undertaken any specific origin/destination surveys, which would have assisted in determining the extent of the impact [6.2.3, 8.4.3, 9.6.4].

12.5.21.5. Based on the walking speed agreed by Network Rail and the Ramblers' Association, the additional 870 metres would be likely to take a mobile adult of average fitness around 11 minutes to walk⁹²⁹ and SCC's estimate is slightly longer. Younger school aged children may take some 17 minutes, based on the walking speed identified by Network Rail⁹³⁰. It may therefore add some 28 minutes to a round trip to drop off or pick up a child at school. I understand that the walking distance from the southeast side of the crossing to All Saints' CEVA School, to the

⁹²⁸ NR/INQ/15 Tab L.

⁹²⁹ NR/INQ/50 (870 metres/1.333 m/s)/60=10.88 minutes.

⁹³⁰ NR/32-4-6 para 2.2.24, (870 metres/ 0.85 m/s)/60=17.05 minutes.

northeast is currently around 380 metres⁹³¹, which, for a journey involving an adult and child in one direction and an adult the other, may take around 12 minutes⁹³². These estimates may be relevant to the journeys associated with the 9 accompanied children recorded using the crossing between 0700-0900 hours on a Monday and the 12 accompanied children using it between 1400-1600 hrs [8.6.5.8].⁹³³

- 12.5.21.6. I consider that the proposal would be likely to add greatly to the travel time of some users [5.4.5.6, 9.10.5.3]. In the absence of any origin/destination surveys, I cannot rule out that a large proportion of existing users would be significantly affected.

Accessibility-distance and gradient

- 12.5.21.7. A number of objectors have raised the concern that footway gradients along the proposed diversion route would amount to a serious obstacle to its use. Network Rail's census survey indicates that around 23 users of the level crossing were either elderly or mobility impaired⁹³⁴. Furthermore, its Diversity Impact Assessment (S22 DIA) acknowledges that, for both elderly and disabled people, slopes and gradients can act as a barrier⁹³⁵. Inclusive Mobility indicates that whilst an 8% slope is widely regarded as the absolute maximum that may be used, 5% is preferred. Furthermore, a ramp is generally defined as a pathway with a slope of more than 5% and steeper slopes require the provision of landings at least every 10 metres or 0.5 metre rise.⁹³⁶
- 12.5.21.8. The S22 DIA takes the view that in order to meet the requirements of the *Equality Act 2010*, a gradient of no more than 5% is required along the proposed diversion route⁹³⁷. Whilst the S22 DIA suggests that this requirement is met, estimates subsequently provided by Network Rail to the Inquiry confirm that that is not the position. Network Rail has calculated that the southeast-bound leg along Cricket Field Road has a gradient of around 5.8% over 60 metres and the northeast-bound leg along Green Road has a gradient of some 6.6% over 55 metres.⁹³⁸
- 12.5.21.9. I acknowledge that users who currently travel to/from S22 along Cricket Field Road may also be likely to be able to manage the relatively steep section of Green Road referred to, which is broadly comparable in terms of gradient⁹³⁹. However, in the absence of any origin and destination surveys undertaken by Network Rail, it is by no means certain that any of the identified elderly or mobility impaired users of S22 do use that section of Cricket Field Road. They may be using less challenging routes,

⁹³¹ NR/32-4-6 para 2.2.21 and 2.2.28 (580 metres minus 200 metres).

⁹³² (380 metres/0.85 m/s)/60+(380 metres/1.333 m/s)/60

⁹³³ NR/32-4-6 Appendix B.

⁹³⁴ NR/32-4-6 para 2.2.3.

⁹³⁵ NR/32-4-6 Appendix C.

⁹³⁶ NR/INQ/15 Tab H sections 3.2, 8.4, NR/32-4-6 Appendix C.

⁹³⁷ NR/32-4-6 Appendix C page 14.

⁹³⁸ NR/32-4-6 para 2.1.10-11.

⁹³⁹ NR/32-4-6 para 2.1.10.

such as traveling across S22 to/from Willow Crescent, which is a residential street immediately to the southeast of the railway and it has a ground level similar to that of the railway.

- 12.5.21.10. Furthermore, Network Rail has calculated that the southeast-bound section of New Cheveley Road, from Green Road, has a gradient of around 4.4% for the first 300 metres and 2.5% for the remaining length up to the junction with Cricket Field Road⁹⁴⁰. Whilst the gradient is less than the preferred 5% maximum, the upward slope extends for a considerable distance, which to mind, would make it difficult for the elderly and people with mobility impairments in particular. This difficulty would be likely to be further exacerbated by the irregular nature of the footway, resulting from the frequency and cross-fall of footway cross-overs to residential driveways. Inclusive mobility confirms that variable cross-fall, such as may be found when travelling along a street with vehicle cross-overs, can be irritating as it affects the steering of wheelchair users and can also cause problems for people with walking difficulties⁹⁴¹.
- 12.5.21.11. Having regard to the distance and gradients associated with the proposed diversion route, I consider that some users would be likely to be deterred from using it, particularly the elderly and those with mobility impairments [9.6.6, 9.10.6.3]. Whilst a number may be able to travel instead by car, I consider it likely that some would be unable to travel. The proposal would be likely to result in a degree of community severance. [5.4.5.7, 9.10.5.5-6]

Pedestrian safety concerns

- 12.5.21.12. The pedestrian desire line through the New Cheveley Road underpass would be likely to be along the northeastern footway⁹⁴², not least as use of the southwestern footway would necessitate crossing New Cheveley Road twice; a road which appeared to me to be a relatively wide, busy highway, with limited visibility to the southeast [9.6.6, 9.11.6.1]. The northeastern footway, which is relatively narrow at around 1.6 metres wide⁹⁴³, is enclosed by the bridge abutment/northern wing wall on one side and handrailing along the road side [10.12.1.4]. I saw that these constraints extend around a blind bend in the footway at its northwestern end [8.6.5.9].⁹⁴⁴ The MfS indicates that, in order to encourage and facilitate walking, pedestrians need to feel safe. Furthermore, pedestrians generally feel safe from crime where, amongst other things, *'they cannot be surprised (e.g. at blind corners) and they cannot be trapped (e.g. people can feel nervous in places with few entry and exit points, such as subway networks)*⁹⁴⁵. I give little weight to the example,

⁹⁴⁰ NR/32-4-6 para 2.1.11.

⁹⁴¹ NR/INQ/15 Tab H section 3.2.

⁹⁴² NR/32-1 page 56.

⁹⁴³ NR/32-4-6 Appendix C page 10.

⁹⁴⁴ NR/32-4-6 Appendix C page 21.

⁹⁴⁵ NR/INQ/15 Tab J para 6.3.18.

drawn to my attention by Network Rail, of a well-used narrow footway through an underpass illustrated in the MfS⁹⁴⁶, which is not directly comparable to the situation at New Cheveley Road, where the underpass footway is enclosed along both sides.

- 12.5.21.13. In my judgement, the physical characteristics of the route through the New Cheveley Road underpass, which includes a blind bend, narrow width and constraints on both sides, would be likely to deter users on the basis of safety concerns.

Conclusion

- 12.5.21.14. With reference to my findings regarding travel time, accessibility and safety, both individually and in combination, and having regard to the purposes for which S22 is likely to be used, I conclude on balance, there is no reasonable prospect that the Order would make provision for a suitable and convenient alternative to S22 nor would such a route be otherwise provided for.
- 12.5.21.15. I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the *Equality Act 2010*, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Protected characteristics include, amongst other things, age and disability. The equality implications of the diversion route identified by Network Rail, with particular reference to my findings with respect to accessibility, add weight to my conclusion that the route would not be suitable and convenient.
- 12.5.21.16. Therefore, provisions related to the closure of S22-Weatherby should be removed from the Order. [8.6.5.11]

12.5.22. **Conclusion**

- 12.5.22.1. I conclude that under the terms of the Order or otherwise there would be a suitable and convenient alternative to the following level crossings and the requirements of section 5(6) of the TWA would be met: S04; S11; S12; S13; S16; S17; S18; S29; and, S30. However, it would not be so in relation to level crossings: S01; S02; S03; S08; S23; S24; S69; S25; S27; S28; and, S31. The provisions related to those crossings should be removed from the Order. Furthermore, neither under the terms of the Order nor otherwise would there be a suitable and convenient alternative to S22. Under these circumstances, Network Rail has indicated that the provisions related to that crossing should also be removed from the Order; and approach with which I agree.
- 12.5.22.2. Having identified the reduced scope of the Order, with reference to section 5(6) of the TWA and associated guidance, it remains necessary to reach a view as to whether it would be in the public interest for the Order to be made. I will first consider the benefits of the Order identified

⁹⁴⁶ NR/INQ/15 Tab K page 44.

by Network Rail before moving on to any other factors to be weighed in the balance.

12.6. **Network Rail's strategic case-SoM1**

12.6.1. Network Rail, which is an arms-length Government body, owns and operates the rail infrastructure of Great Britain. Under the terms of its licence, it is responsible for maintenance, repair, renewal and safe operation of that infrastructure, and it has a duty to enhance and improve the railway network in operational terms [3.2.2]. It follows that safety improvements, cost savings and operational efficiencies it can make would constitute public benefits. Further support for this position is provided by:

- a) The *National Policy Statement for National Networks (NPSNN)*, which identifies 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*'⁹⁴⁷;
- b) The *Framework*, which seeks to promote sustainable transport and, having regard to economic, social and environmental factors, achieve sustainable development;
- c) The *Suffolk Local Transport Plan 2011-2031 (SLTP)*, which highlights the importance of seeking improvements to the rail network, identifying that '*Transport has a key role to play in delivering Suffolk's economic strategy*'.⁹⁴⁸ Similarly, the Suffolk Rail Prospectus (SRP)⁹⁴⁹ highlights that '*A decent rail service is vital to growing our county's economy, attracting investment, creating jobs and supporting a growing population. It is our ambition to improve rail services and infrastructure, and we will use the priorities contained within this document to make our case to Government and the wider rail industry.*'

12.6.2. However, as acknowledged by Network Rail, all of those high-level policy documents also recognise the importance of access to local routes for non-motorised users. Against this background, it accepts that there is a need to strike a balance [3.4.5-6].

12.6.3. Network Rail's case for the Order is that: 1) where required as a result of a proposed level crossing closure, a suitable and convenient alternative route would be available or provided; and, 2) between them, the closures of the level crossings secured by the Order would contribute towards the achievement of 3 strategic aims [3.2.5-10]:

- a) The safety of rail users and of those interacting with the railway by reason of the crossing points over the railway;

⁹⁴⁷ Para 2.2., extracted at para 5.2 of Mark Brunnen's PoE (A copy of the NPS is at NR/INQ/4/5.1)

⁹⁴⁸ OBJ/29/C11 page 580 (internal page 11)

⁹⁴⁹ OBJ/29/C12.

- b) The efficient use of public funds; and,
- c) The operational efficiency of the network.

- 12.6.4. Network Rail has confirmed that the crossings included within the Order have not been selected based on the specific risk associated with that crossing; a specific enhancement scheme being 'held back' by the presence of that crossing; or, the costs associated with maintaining that crossing. Rather its approach is based on the general proposition that the closure of a level crossing would result in: the removal of safety risks associated with its use; the removal of potential adverse implications, insofar as there are any, of its use for the operational efficiency of the railway; and, the cost associated with operating and maintaining that crossing no longer being incurred. [3.2.7-8]
- 12.6.5. Whilst I accept this general proposition, I consider that the actual benefits realised by the Order would be dependent on the particular circumstances associated with each crossing. Furthermore, the scale of benefits may be a relevant factor in circumstances where it is necessary to weigh the advantages and disadvantages to determine whether it would be in the public interest for the Order to be made.

Safety

- 12.6.6. It is indisputable that there are safety risks associated with the use of level crossings. When accidents occur the consequences for those directly involved can be particularly severe. Furthermore, I don't doubt that the impacts can be far reaching, affecting others such as the family of any victim(s) and emergency services⁹⁵⁰.
- 12.6.7. However, The Office of Rail and Road's (ORR) '*Strategy for regulation of health and safety risks-4: Level crossings*' (ORR LCS) states '*it is rare for level crossing incidents to have significant safety consequences for train crew or passengers, but such cases do occur, and are generally the result of the train derailing after a collision with a road vehicle at a crossing*'. Those circumstances are not particularly relevant in this case. The only vehicular crossing the subject of the Order is S18, which, whilst it has the status of a BOAT, is the subject of a Temporary Traffic Restriction Order preventing vehicular use and that would be formalised by the Order. I consider that the Order would be unlikely to provide any significant benefits as regards the safety of rail staff or rail users.
- 12.6.8. The ORR LCS also states '*...we want to:... encourage crossing closure and ensure that all risk assessments consider this first, in line with the principles of prevention, prioritising those crossings that present the highest risk*'⁹⁵¹. Although I understand that the ORR supports the proposed scheme of level crossing closures⁹⁵², it appears to me to be a poor fit with its strategy, given Network Rail's acknowledgement that the

⁹⁵⁰ NR/28-1 para 2.3.6.

⁹⁵¹ NR14

⁹⁵² NR/INQ/19.

expenditure associated with the Order could be directed to higher risk crossings⁹⁵³.

- 12.6.9. I have had regard to the output from Network Rail's level crossing risk ranking model, ALCRM. Whilst, as I have already indicated, it is generally of little assistance when considering the comparative risks associated with a level crossing and a proposed alternative route [12.5.2.3], it does provide a means to judge the extent to which the proposed works would reduce the level of risk associated with Network Rail's level crossing asset base in its Anglia region. Network Rail has indicated that there are 771 level crossings in the region with a cumulative Fatalities and Weighted Injuries score (FWI) of 2.95 [3.2.18e)]; a FWI of 1.0 equating to 1 fatality per year. The Order as drafted would result in a FWI reduction of 0.018, equivalent to around 0.6%⁹⁵⁴. Against this background, at a strategic level, I consider that the safety benefits associated with the Order as drafted would be small.
- 12.6.10. I conclude that the cumulative safety benefits likely to result from the Order would be likely to be small, to which little weight is attributable.
- 12.6.11. Furthermore, if account is taken of the crossings that I have concluded should be removed from the Order⁹⁵⁵, the reduction would be significantly less, S22 alone having a FWI of around 0.013⁹⁵⁶. In this context, at a strategic level, the cumulative safety benefits would be negligible.

Costs

- 12.6.12. Network Rail has confirmed that projects, such as that subject of the Order, which utilise its route renewals funding are not subject to Cost Benefit Analysis in line with the principles from the Government's 'Green Book'⁹⁵⁷. I give little weight to the 'cost benefit analysis' (cba) figures included in Network Rail's crossing specific evidence⁹⁵⁸, which have been generated by Network Rail's Level Crossing Managers to inform their management of their level crossings. Network Rail has confirmed that those figures are based on generic costs and it does not rely on them in support of the Order [3.3.24, 8.3.10].
- 12.6.13. Network Rail has indicated that closure of crossings within the Order would reduce its direct: asset inspection and general maintenance costs by around £159,000 per annum⁹⁵⁹; and, Level Crossing Manager costs by some £40,000 per annum [3.2.24]. Furthermore, if the crossings remain open it would expect to expend around £10,844,200 over a 30 year period on: renewals; and, upgrading the 'passive' crossings to 'active'

⁹⁵³ Mr Brunnen's oral evidence, NR/28-1 para 2.6.5.

⁹⁵⁴ NR/28-1 para 2.3.2.

⁹⁵⁵ S01; S02; S03; S08; S23; S24; S69; S25; S27; S28; S31; S22

⁹⁵⁶ NR/31-1 para 19.1.

⁹⁵⁷ NR/INQ/43.

⁹⁵⁸ NR/31-1.

⁹⁵⁹ NR/INQ/21-£7,584x21 crossings or para 3.2.24-£4,777,920/30 years

crossings in line with Network Rail's '*Transforming Level Crossings*' strategy.⁹⁶⁰ I calculate that to be equivalent to around £360,000 per annum on average⁹⁶¹. Therefore, the costs, which would potentially be avoided as a result of the Order, equate to around £560,000 per annum on average, overall⁹⁶². Network Rail has estimated that the cost of implementation of the Order would be around £2,204,473⁹⁶³ and it has indicated that the £401,466 it has allowed for '*fees of professional and other advisers*' includes an estimated figure for commuted sums payable to the Highway Authority⁹⁶⁴. This relates to the increased maintenance burden associated with the alternative routes to which users would be diverted [3.2.26, 5.4.2.1]. Network Rail does not dispute that there is scope to improve the safety of crossings through investment in technology [10.12.4]⁹⁶⁵. However, based on these cost estimates it is undoubtedly cheaper for Network Rail to close the crossings rather than maintain and manage them and at a saving rate of around £560,000 per annum it appears that it would take around 4 years until a net benefit is realised in cost terms. [6.1.9-10]

12.6.14. However, I give limited weight to the argument that the money saved on maintenance and management, resulting from the Order, would be directed to level crossings most in need of enhancement elsewhere on the rail network [3.2.25, 3.3.4]. Network Rail has indicated that its funding is subject to 5 yearly control period reviews⁹⁶⁶ and, notwithstanding Network Rail's '*Transforming Level Crossings*' strategy, it has indicated there is no guarantee that the *Anglia CP5 Level Crossing Reduction Strategy* would proceed beyond the completion of phase 1, the subject of the current Order⁹⁶⁷. In any event, the savings would be relatively small. For example, with reference to the £2,409 million Control Period 6 budget sought by Network Rail for Anglia route operations, maintenance and renewals; a saving of £560,000 per annum over 5 years represents around 0.1% of the budget⁹⁶⁸. Furthermore, Network Rail's estimate for the cost of upgrading a single crossing from passive to active (installing miniature stop lights and renewal of the right of way) is around £389,100⁹⁶⁹.

12.6.15. I conclude that cumulative cost benefits likely to result from the Order would be likely to be small, to which little weight is attributable.

Operational efficiency

Timetable resilience

⁹⁶⁰ Dr Algaard PoE para 2.2.8. The '*Transforming Level Crossings*' strategy is core document NR17.

⁹⁶¹ Para 3.2.24-£8,884,000+1,960,200=£10,844,200/30=£361,473.

⁹⁶² £361,473+159,000+40,000=£560,473.

⁹⁶³ NR7

⁹⁶⁴ Mr Kenning's oral evidence.

⁹⁶⁵ Indicative details for each crossing are set out in NR/31-1, for example para 6.15.

⁹⁶⁶ NR/INQ/25.

⁹⁶⁷ Mr Kenning's oral evidence and NR18-Client Requirements Document page 5, section 1.

⁹⁶⁸ $5 \times 0.56 / 2,409 = 0.1\%$.

⁹⁶⁹ NR/INQ/21.

12.6.16. I acknowledge that asset failures or incidents at level crossings have the potential to have a significant impact on timetable resilience. For example, Network rail has indicated that, *'if a level crossing has insufficient sighting, Network Rail may consider implementation of a temporary speed restriction (TSR). These speed restrictions affect the efficient running of train services, delaying passengers and requiring compensation to be paid'*⁹⁷⁰. I also accept that only by removing these interface points can Network Rail *'entirely remove this risk to the efficient and effective timetabled service'* [3.2.27-31]. However, there is no compelling evidence before me to support Network Rail's contention that closure of the particular level crossings the subject of this Order would *'clearly and materially'* reduce that risk [3.2.31, 8.3.5]. For example, none of the crossings are identified as having an associated speed restriction due to insufficient sighting. Furthermore, whilst SCC's *'Suffolk Rail Prospectus'* recognises that *'for some routes, such as the East Suffolk Line, level crossings slow down services'*, it appears to me that the East Suffolk Line does not contain any of the Order crossings [3.2.32]⁹⁷¹. I give the claimed benefits of the Order in respect to timetable resilience little weight.

Enhancements of the network

12.6.17. Network Rail has identified 3 prospective enhancement schemes which it indicates would benefit to some degree from the proposed closures [3.2.33]:

- a) Norwich in 90: the concept of which is to transport passengers from Norwich to London Liverpool Street (on the Great Eastern Main Line) within 90 minutes⁹⁷²;
- b) Bury Headway Improvements: enhancements to the strategic freight network using the cross-country route from Felixstowe via Ely to Peterborough⁹⁷³; and,
- c) East-West Rail: this project would utilise a cross country route with the potential for an increase in passenger services between Cambridge and Ipswich⁹⁷⁴ [6.1.12].

12.6.18. However, Network Rail has confirmed that it is not suggesting that any of the crossings in the Order is preventing a specific enhancement scheme from coming forward. Rather, it suggests that removing these crossings would remove constraints which would otherwise have to be addressed when or if a proposed enhancement was to come forward [3.2.42], matters about which, it seems to me, there is considerable

⁹⁷⁰ NR/28-1 para 2.4.19.

⁹⁷¹ OBJ/29-C12 page 658

⁹⁷² Crossings S01, S02, S03, S04, S07, S08, S11, S12, S13, S69, S16, S17, S18 & S21 are situated on this line (see NR/INQ/52)

⁹⁷³ Crossings S07, S08, S23, S24, S25, S27, S28, S29, S30 and S31 are situated on this line (see NR/INQ/52)

⁹⁷⁴ Crossing S22 is situated on this section of line (see NR/INQ/52) (Inspector's note: OP/INQ/92 indicates that the question as to whether the service would run through Newmarket has not yet been answered).

uncertainty. For example: 'Norwich in 90' is currently unfunded; and, the Eastern Section of the 'East-West Rail' route, which includes the line through S22, is not expected to be brought forward in advance of the Western and Central sections, the last of which is not predicted to be operational until the early 2030s. Furthermore, it appears that even if the Order crossings were removed as proposed, a significant number of constraints would remain to be addressed on each route, many of them involving more expensive solutions, such as bridges potentially costing around £2,000,000 each⁹⁷⁵. [6.1.11-14]

12.6.19. I conclude that there is no evidence to show that the Order crossings are preventing a specific enhancement scheme from coming forward. Furthermore, I consider that in comparison with the costs of closing the Order crossings, far greater expense and time would be likely to be associated with removing other constraints to potential enhancement schemes, such as the need to replace numerous crossings with bridges. It appears unlikely to me therefore that, if left in place until a later stage, the costs associated with the closure of the Order crossings as proposed would be likely to have a material detrimental impact on the cost benefit ratio for any of the identified potential schemes or the time taken to enact them.

12.6.20. I conclude that the potential cumulative operational efficiency benefits resulting from the Order would be likely to be small, to which little weight is attributable.

Conclusion

12.6.21. Network Rail is an arms-length Government body and it follows that any safety improvements, cost savings and operational efficiencies it can make would amount to public benefits and would gain some support from the NPSNN, the Framework and local policy documents, such as the SLTP and SRP. However, I conclude overall, that the cumulative strategic benefits identified by Network Rail in support of the Order would be small and attract little weight [3.5.17.9]. Furthermore, judged on a crossing by crossing basis, the benefits would be even more limited.

12.7. **Other factors-general points-SoM3/6/8**

12.7.1. **SoM6/8-Compulsory purchase**

12.7.1.1. The Government's *Guidance on Compulsory purchase process and The Crichel Down Rules (2018)* confirms, amongst other things, that:

- a) A compulsory purchase order should only be made where there is a compelling case in the public interest; and,
- b) An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the

⁹⁷⁵ NR/INQ/52 and NR/31-1 (e.g. para 25.15(ii)) installation cost of overbridge assumed by Network Rail to be around £2,000,000, NR/28-1-para 2.6.4 recent example of a bridge costing £3.5-4 million.

human rights of those with an interest in the land affected.
Relevant factors include, amongst others,

1. *Whether any land and rights sought are required; and,*
2. *Whether all the necessary funding is likely to be available.*

12.7.2. **SoM8-Funding**

12.7.2.1. Network Rail's estimate of the anticipated final cost of implementing the Order is around £2,204,000⁹⁷⁶. It has confirmed that authorised funds for Control Period 5 (CP5) and applied for funds for Control Period 6 (CP6) would meet the capital cost of implementing the Order, inclusive of compensation and any acquisition of blighted land⁹⁷⁷. The budget sought by Network Rail for Anglia route operations, maintenance and renewals during CP6, from where the funds would be drawn, is around £2,409 million⁹⁷⁸. Network Rail's ability to fund the implementation of the Order is not disputed by others. I conclude that the required funding would be likely to be available within a reasonable timescale. [3.7]

12.7.3. **SoM3-Policy**

12.7.3.1. SCC and SEBC agree with Network Rail that the Secretary of State is not under a statutory duty to apply the test in section 38(6) of the *Planning and Compulsory Purchase Act 2004* (PCPA 2004) [3.4.10, 5.3.1]. Furthermore, the *Anglia CP5 Level Crossing Reduction Strategy*⁹⁷⁹ did not mention local or national planning policies [8.3.4]. Nevertheless, Network Rail places some reliance on local and national policy in support of its strategic case, as set out above, and I consider that the extent to which the proposals in the Order are consistent with national policy and local transport, environmental and planning policies may be a material consideration in determining where the public interest lies.

12.7.3.2. The *National Planning Policy Statement for National Networks* (NPSNN) indicates that '*public rights of way... are important recreational facilities for walkers, cyclists and equestrians... Applicants are expected to take appropriate mitigation measures to address adverse effects on... public rights of way... 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 rights of way. The Secretary of State should consider whether mitigation measures put forward by an applicant are acceptable...*'⁹⁸⁰. The Framework seeks to '*...protect and enhance public rights of way and access...*' [3.4.2]⁹⁸¹.

⁹⁷⁶ NR7.

⁹⁷⁷ NR6.

⁹⁷⁸ NR/INQ/25.

⁹⁷⁹ NR18.

⁹⁸⁰ NR/INQ/4 Appendix 5.1 para 5.184.

⁹⁸¹ National Planning Policy Framework (2012) para 75 superseded by revised National Planning Policy Framework (July 2018 and February 2019) para 98.

- 12.7.3.3. In keeping with national policy, the *Suffolk Local Transport Plan 2011-2031* (SLTP) identifies that the public rights of way network can play an important role in rural areas and on the fringes of towns in providing traffic-free and safe routes for walking and cycling journeys. The SLTP aims include facilitating an increase in walking and cycling as one means of addressing its priority of improving the health of communities.⁹⁸² The *SCC Rights of Way Improvement Plan 2006-2016* (ROWIP), under *Objective B: provide and protect a more continuous network that provides for the requirements of all users*, seeks, amongst other things, to improve access to and from the countryside via public rights of way in the urban fringe, and to improve routes to services⁹⁸³.

⁹⁸² OBJ/29/C11 pages 9 and 27.

⁹⁸³ OBJ/29/C9 objective B.

12.8. Other factors-crossing specific-Som2/4/6

12.8.1. I will deal first with those crossings in relation to which I have concluded that the requirements of section 5(6) of the TWA would be met along with S21, in relation to which there is no dispute that section 5(6) does not apply; Crossings: S04; S11; S12; S13; S16; S17; S18; S21; S29; and, S30.

12.8.2. S04

12.8.2.1. The Order includes provisions to allow the temporary stopping up of Church Road/Bentley Bridge to facilitate the formation of a footpath in the highway verge along the southern side of the carriageway. Given the relatively minor nature of the works, it appears most likely to me that only a partial road closure would be required. However, even if vehicles were prevented from passing, the duration of such works would be likely to be relatively short and alternative routes to all premises would be available using the wider highway network⁹⁸⁴. The proposals would be unlikely to have a material adverse effect on the ability of Royal Mail Group Limited (OBJ/52) to fulfil its duties as regards the collection and delivery of mail [10.17.8].

12.8.2.2. I conclude on balance, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, that there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]⁹⁸⁵.

12.8.3. S11

12.8.3.1. There are no outstanding objections to the closure of this crossing.

12.8.3.2. I conclude on balance, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]⁹⁸⁶.

12.8.4. S12

12.8.4.1. Whilst public footpath rights over S12 would be extinguished by the Order, existing private rights of access would remain. Therefore, access across S12 for farming purposes, between the parcels of agricultural land on either side of that crossing, would be unaffected. Under these circumstances, the tenant farmer of that land, OBJ/26, has withdrawn his objection⁹⁸⁷ [3.5.13.6, 9.2.4.1-4]. I am content therefore, that the proposal would not have an adverse impact on private interests, including the agricultural business neighbouring S12.

⁹⁸⁴ NR/INQ/36.

⁹⁸⁵ Order sheet 32

⁹⁸⁶ Order sheet 16.

⁹⁸⁷ OP/INQ/34.

- 12.8.4.2. The Order includes the acquisition of rights to enable Network Rail to access the existing crossings at S12 and at Cow Creek for maintenance purposes. To my mind, this falls within the reasonable scope of the Order, being a matter ancillary to the operation of a transport network. OBJ/25 accepts that Network Rail probably has such rights by long use. In my view, the acquisition of these rights would be unlikely to have a material adverse effect on those with an interest in the land. [10.6.1]
- 12.8.4.3. I consider that these matters do not weigh materially against the S12 proposals.
- 12.8.4.4. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]⁹⁸⁸.
- 12.8.5. **S13**
- 12.8.5.1. I have already concluded that it is not necessary to provide a new footpath between Cow Creek and S13⁹⁸⁹, on the western side of the railway between P064 and P060 (Order sheet 19) [12.5.10.2]. A suitable and convenient alternative to enable users to travel between land on the eastern and western sides of S13 already exists, via Cow Creek crossing and the PRoW network. In my judgement, the proposed new footpath would not be required to protect the PRoW network, nor would it materially enhance it. As such, it would not gain any particular support from national or local policy.
- 12.8.5.2. Furthermore, the proposed new field edge footpath would increase the bio-security risk to agricultural produce within the field, with particular reference to neosporosis, to the detriment of the farming enterprise. Whilst the compensation framework may adequately recompense the farmer for the loss of productive land resulting from the provision of the footpath route and any necessary margin, I have not been provided with any compelling evidence to show that account could be taken of the added bio-security impact. This weighs against the provision of the proposed new field edge footpath. [3.5.13.3, 9.5.12, 10.7.1] In my judgement, the proposed new field edge footpath, which is not necessary in terms of ensuring the existence of a suitable and convenient alternative to S13, would be likely to harm the associated farming enterprise.
- 12.8.5.3. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the S13 proposals⁹⁹⁰. Removal of the proposed new footpath between P064 and P060 from the Order may result in a contrary conclusion. However, it would amount to

⁹⁸⁸ Order sheets 17 and 18.

⁹⁸⁹ Order sheet 19 P060-P064.

⁹⁹⁰ Order sheet 19.

a substantial modification of the proposals associated with the closure of S13. Furthermore, Network Rail does not support it and has indicated that such a change may prejudice other parties who might have an interest⁹⁹¹. The latter view I share. Under these circumstances and having had regard to the DfT's 'A Guide to TWA Procedures'⁹⁹², I consider that a fresh application would be needed to pursue such an option. The same can be said in relation to proposed alternatives identified by OBJ/26, which would involve land outside the Order limits [9.5.15].

12.8.5.4. I conclude overall, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing [3.5.4.3-4]. Provisions associated with the closure of S13 should be removed from the Order.

12.8.6. **S16**

12.8.6.1. As drafted, the temporary use of plot 5 would have been likely to block the main access to Eastland's Farm, to the detriment of the associated farming enterprise [10.8.1]. There is no evidence before me to show that this would be necessary to facilitate the Order works. In fact, prior to the Inquiry, Network Rail confirmed that plot 5 should be removed from the Order.

12.8.6.2. I conclude on balance that, having had regard to Network Rail's strategic case, the other matters raised, including national and local policy, and subject to the removal of plot 5, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]⁹⁹³. Plot 5 should be removed from the Order.

12.8.7. **S17**

12.8.7.1. There are no outstanding objections to the closure of this crossing.

12.8.7.2. I conclude on balance, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, that there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]⁹⁹⁴.

12.8.8. **S18**

12.8.8.1. As S18 is already the subject of a Prohibition of Driving Order, I give little weight to the objection to the effect that it should not be downgraded from a BOAT to a bridleway. [3.5.15.3, 10.10.1]

⁹⁹¹ NR/INQ/131, Ref. A Guide to TWA Procedures para 3.48(c).

⁹⁹² NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

⁹⁹³ Order sheet 22.

⁹⁹⁴ Order sheets 23 and 24.

- 12.8.8.2. Network Rail recognises that it does not have a right of access across Mellis Common in order to undertake the proposed works. However, it does have a right of access from Chapel Farm Lane, which to my mind, is likely to be sufficient to undertake the limited works proposed. [3.5.15.5, 10.10.1]
- 12.8.8.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.8.8.4. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and downgrading of the crossing [3.5.4.3-4]⁹⁹⁵.
- 12.8.9. **S21**
- 12.8.9.1. Network Rail's position that there is no recorded public right of way at S21 has not been disputed and it follows that section 5(6) of the TWA would not apply there. However, concerns have been raised that the alternative walking routes available to users would offer a lower level of amenity and safety [10.11.1].
- 12.8.9.2. Network Rail has indicated that, based on the location of the crossing point and the feedback from public consultation, S21 is used to access properties and services in and around the village of Mellis [3.5.16.2]. Following closure, users would be diverted along a mix of existing highways and a footpath to cross the railway at an existing 'Mellis' road level crossing within the village⁹⁹⁶. It appears to me that the Mellis level crossing, which is protected by automated barriers, offers pedestrians a greater level of protection than S21, which is a passive level crossing where pedestrians decide when to cross. Furthermore, although the Mellis level crossing does not have a kerbed footway, it does have white line delineated areas indicating separate lanes for vehicles and pedestrians. Furthermore, in this case, the crossing is located on a relatively long straight section of highway, providing good intervisibility between all users. I consider that, with particular reference to amenity and safety, this alternative would be acceptable.
- 12.8.9.3. With reference to the PSED, and having regard to the submission made, I consider that the inclusion of this crossing in the Order would be unlikely to conflict with the aims of the Equality Act 2010.
- 12.8.9.4. Prior to the Inquiry, Network Rail confirmed that it is not necessary to acquire rights over plot 7, as the areas of land temporarily required to facilitate the proposed works could be accessed from the other side of the railway. Furthermore, the Order makes provision for compensation for any loss or damage resulting from the exercise of powers of temporary occupation. Once the works are complete, Network Rail is

⁹⁹⁵ Order sheet 25.

⁹⁹⁶ NR26 Appendix F S31.

obliged, under the terms of the Order, to reinstate land subject to temporary occupation to the reasonable satisfaction of the owners

[3.5.16.5, 10.11.2].

12.8.9.5. I conclude on balance that, having had regard to Network Rail's strategic case, the other matters raised, including national and local policy, and subject to the removal of plot 7, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]. Plot 7 should be removed from the Order.

12.8.10. **S29**

12.8.10.1. During the Inquiry, Network Rail confirmed that the provisions related to plots 11, 12 and 13 are not required. The other plots would provide sufficient access to allow the works necessary to remove the crossing and for the proposed new footpath between P041 and P042 to be carried out. I am content that this would be the case. Against this background, OBJ/53 withdrew its objection [3.5.21.3]⁹⁹⁷.

12.8.10.2. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, and subject to the removal of plots 11, 12 and 13, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4]. Plots 11, 12 and 13 should be removed from the Order.

12.8.11. **S30**

12.8.11.1. There are no outstanding objections to the closure of this crossing.

12.8.11.2. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4].

12.8.12. **Other crossings: S01; S02; S03; S08; S23; S24; S25; S27; S28; S31; S69; and, S22**

12.8.12.1. I have found that the requirements of section 5(6) of the TWA would not be met in relation to crossings: S01; S02; S03; S08; S23; S24; S25; S27; S28; S31; and, S69. In my judgement, it follows that: the provisions related to those crossings should be removed from the Order; and, closure of those crossings would conflict with the aims of local and national policy insofar as they seek to protect the public rights of way network. Furthermore, neither under the terms of the Order nor otherwise would there be a suitable and convenient alternative to S22. Under these circumstances, Network Rail has indicated that the

⁹⁹⁷ NR/INQ/100 and 101.

provisions related to that crossing should also be removed from the Order.

12.8.12.2. However, in the event that the Secretary of State takes a different view in relation to whether: the requirements of section 5(6) of the TWA would be met in relation to those 11 crossings; and, there be a suitable and convenient alternative to S22, I turn now to consider whether, under such circumstances, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of those crossings.

12.8.13. **S01**

12.8.13.1. There is an area of reed bed to the southwest of the section of the proposed footpath between P160 and P161. The scheme includes the provision of a stock proof fence between the two areas, which would be likely to prevent footpath users and any associated animals from encroaching on the reed bed area. In my view therefore, use of the proposed footpath would be unlikely to have an adverse effect on the reed bed habitat [10.1.1.4].

12.8.13.2. Network Rail has confirmed that the proposed temporary stopping up of Rectory Lane/Bridleway 015 Brantham would be only required while connections to the proposed new public right of way are made⁹⁹⁸. Under these circumstances, I accept that the proposed stopping up would be unlikely to cause significant disruption to users of the PRow network thereabouts [10.1.2].

12.8.13.3. Whilst it appears that Footpath 013 Brantham would need to be widened in order to serve the development subject of planning permission Ref. B/15/00263/FUL/SMC, there is no evidence before me to show that extinguishment of the section of that footpath on the northern side of the railway would be likely to compromise that approved development [10.1.1.6]. The route along Restricted Byway 014 Brantham and Footpath 012 Brantham, which appear to form part of the route of the Stour and Orwell Walk, would remain [3.5.6.3, 10.1.1.3]⁹⁹⁹.

12.8.13.4. Network Rail has indicated that it intends to pay commuted sums to SCC to cover future maintenance costs. That being the case, it would be open to SCC to ensure that access along the section of the proposed footpath between P161 and P162 would not be obstructed by overhanging trees [10.1.1.5, 10.1.2].

12.8.13.5. OBJ/83 has suggested an alternative route, which would involve the use of an existing underpass to the southwest of S01 [10.1.1.1]. However, routes involving the use of that underpass have previously been considered and rejected by Network Rail on the basis of potential impacts on wildlife on the peninsula area to the south of the railway¹⁰⁰⁰. I have no reason to disagree with that assessment.

⁹⁹⁸ NR/26 page 47.

⁹⁹⁹ Order sheet 37-S01 Sea Wall, NR/INQ/48-Stour and Orwell Walk.

¹⁰⁰⁰ NR/INQ/69.

- 12.8.13.6. If, contrary to my earlier finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4] ¹⁰⁰¹.
- 12.8.14. **S02**
- 12.8.14.1. The proposal includes the retention of a dead-end section of Footpath 06 Brantham running from P153 adjacent to Victoria Cottage to the railway at P145/154, with a boundary fence at its end point. This provides for the retention of a woodland walk to a vantage point with extensive views across the countryside to the northeast. In my judgement, the benefits in this respect outweigh the limited risk that users would attempt to proceed beyond the proposed fence line onto agricultural land where they would no longer have a right of access [8.6.4.1, 10.2.2].
- 12.8.14.2. The proposed alternative route would involve the use of footways alongside the A137, between Jimmy's Lane and Street Farm.¹⁰⁰² Thereabouts the A137 is a fairly busy road and consequently less attractive than the existing cross-field path between P145/154 and the level crossing. This would be likely to diminish user enjoyment of the local PRoW network, weighing against the scheme, albeit to a limited extent. However, the Order also includes the formation of a short section of footway in the highway verge along the western side of the A137 carriageway, linking up parts of the PRoW network further to the north. This would constitute a small improvement to the local PRoW network, to which I attribute limited weight. Taking these particular factors together, I consider that the proposals would protect public rights of way, in keeping in that respect with the aim of local and national policy.
- 12.8.14.3. The Order includes provisions to allow the temporary stopping up of a section of the A137 to facilitate the formation of the short section of footway in the highway verge along the western side of the carriageway. Given the relatively minor nature of the works, it appears most likely that only a partial road closure would be required¹⁰⁰³. However, even if vehicles were prevented from passing, the duration of such works would be likely to be relatively short and alternative routes to all premises would be available using the wider highway network¹⁰⁰⁴. I consider therefore, that the proposals would be unlikely to have a material adverse effect on the ability of Royal Mail Group Limited (OBJ/52) to fulfil its duties as regards the collection and delivery of mail. [10.17.8]

¹⁰⁰¹ Subject to the retention of Footpath 013 Brantham between P159 and P160.

¹⁰⁰² NR26 Appendix F S02.

¹⁰⁰³ NR26 page 50.

¹⁰⁰⁴ NR/INQ/36.

- 12.8.14.4. In relation to plot 6, the powers sought are limited to the temporary use of land. The route of the proposed footpath here is set back further from the field boundary than elsewhere, not least as that boundary is lined by large trees. Under the circumstances, I consider that although the plot is unusually wide, this would be necessary in order to appropriately position the footpath away from the trees and provide temporary working space. Plot 6 represents only a small proportion of the field in which it is situated. In my view, this temporary land take would be unlikely to prejudice the associated farming enterprise. Furthermore, I consider that the alternative, suggested by OBJ/62 [10.2.3], of running the footpath through the garden of a residential property to a point between P150 and P149 would be likely to cause much greater harm, with particular reference to the living conditions of the residents of the affected dwelling¹⁰⁰⁵. I give that suggestion little weight.
- 12.8.14.5. OBJ/62 has suggested an alternative route for the proposed footpath to the east of the railway, along the eastern side of the same field, adjacent to the A137 [10.2.3]. However, that route was considered and rejected by Network Rail due to, amongst other things, the length of roadside walking involved [3.5.7.16], which would be even greater than the length associated with the proposed route, the subject of objection by the Ramblers' Association and BPC [8.6.4.1, 10.2.1]. OBJ/83 has suggested that on the east side of the railway the 'red route'¹⁰⁰⁶ previously considered by Network Rail should be adopted in place of the proposed route. However, this was ruled out by Network Rail on the basis that the engineering solution, which would involve forming a footpath in a narrow space along the top of a tall embankment, could not be delivered within the scope of phase 1 of Network Rail's *Anglia CP5 Level Crossing Reduction Strategy* [3.3.15, 10.2.1]¹⁰⁰⁷. I have no reason to disagree with Network Rail's assessment that these alternatives would not be acceptable.
- 12.8.14.6. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected and closure of the crossing [3.5.4.3-4].
- 12.8.15. **S03**
- 12.8.15.1. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met; I consider that the S03 proposals would be unlikely to conflict with the aim of local and national policy to protect public rights of way.

¹⁰⁰⁵ NR/32-2 page 190.

¹⁰⁰⁶ NR/32-2 page 108

¹⁰⁰⁷ NR18 page 9 para 2.1.2.1

- 12.8.15.2. The proposed route would result in the loss of productive agricultural land and it would be likely to constrain the landowner's ability to maintain an adjacent stream [9.3.4.2]. However, insofar as these matters affect the value of the land, compensation is likely to be payable [3.5.8.8-9].
- 12.8.15.3. OBJ/60 has suggested 2 alternative routes to that which is set out in the Order, with the aim of reducing the likely landowner impact [9.3.4.4]. Network Rail has rejected both on the basis of possible technical difficulties: Alternative A-on the basis that the route may encroach on and interfere with maintenance of a railway embankment; and, Alternative B-on the basis that it is affected by surface water ponding. In the latter case, the source of the ponding is unknown and this casts doubt over whether its impact could be mitigated [3.5.8.10-12, 9.3.4.4]. Nonetheless, at least in the case of alternative A, which would run entirely within Network Rail's land, it appears to me that sufficient space would be available and the works required would be likely to be relatively minor¹⁰⁰⁸. I consider that, under the circumstances, to proceed as proposed by Network Rail would be contrary to its *Anglia CP5 Level Crossing Reduction Strategy*, which states that '*the means to get to the alternative crossing point would be provided on Network Rail land wherever possible*'¹⁰⁰⁹. This weighs against the Order proposals for S03.
- 12.8.15.4. If the Order were modified to reflect alternative A, it would amount to a substantial change, which may prejudice the interests of others who have not been consulted on the alternative works. Under these circumstances and having had regard to the DfT's '*A Guide to TWA Procedures*'¹⁰¹⁰, I consider that a fresh application would be needed to pursue such an option.
- 12.8.15.5. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met; I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing [3.5.4.3-4]. I refer in particular to the likely existence of a favourable alternative diversion using Network Rail land, which would accord with its strategy and also have a lesser impact on private interests. I conclude that the provisions associated with the proposed closure of S03 should be removed from the Order.
- 12.8.16. **S08**
- 12.8.16.1. OBJ/34 has suggested that rather than using the footway along the B1113, an alternative footpath route between S08 and the bridge crossing, to the north, could be provided in the field situated immediately to the west of the railway [9.4.26]. Network Rail has rejected

¹⁰⁰⁸ OBJ/60-2 tab 5.

¹⁰⁰⁹ NR18 page 9 para 2.1.2.1.

¹⁰¹⁰ NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

that suggestion on the basis that its proposed route would be suitable and convenient, a view with which I disagree. In any event, I consider that the alternatives suggested by OBJ/34 would amount to a substantial change to the Order provisions associated with the proposed closure of S08, including new areas of land, and may prejudice the interests of others, such as affected private landowners, who have not been consulted on the alternative works. Under these circumstances and having had regard to the DfT's *'A Guide to TWA Procedures'*¹⁰¹¹, I consider that a fresh application would be needed to pursue such an option.

12.8.16.2. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions and closure of the crossing [3.5.4.3-4].

12.8.17. **S23**

12.8.17.1. SCC and SLAF have suggested an alternative diversion route involving the provision of an off-road, in-field, route from the southern end of Footpath 001 Higham to the Higham Road railway bridge, which would negate the need for road walking in the vicinity of the War Memorial [5.4.6.8, 9.1.14]. This has been rejected by Network Rail, not least on the basis that it would be likely to necessitate new powers being added to the scope of the Order to allow the acquisition of new rights over land and works to be undertaken [3.5.18.21-23]. In my judgement, such a modification would amount to a substantial change to the Order provisions associated with the proposed closure of S23 and may well prejudice the interests of others, such as affected private landowners, who have not been consulted on those alternative works. Under these circumstances and having had regard to the DfT's *'A Guide to TWA Procedures'*¹⁰¹², I consider that a fresh application would be needed to pursue such an option.

12.8.17.2. The Order includes provisions to allow the temporary stopping-up of a section of the A14 on-slip road to facilitate the formation of a footway in the highway verge. To my mind, given the relatively minor nature of the works, it appears most likely that only a partial road closure would be required¹⁰¹³. However, even if vehicles were prevented from passing, alternative routes to all premises would be available using the wider highway network¹⁰¹⁴. The proposals would be unlikely to have a material

¹⁰¹¹ NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

¹⁰¹² NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

¹⁰¹³ NR26 page 87.

¹⁰¹⁴ NR/INQ/36.

adverse effect on the ability of Royal Mail Group Limited (OBJ/52) to fulfil its duties as regards the collection and delivery of mail. [10.17.8]

- 12.8.17.3. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions and closure of the crossing [3.5.4.3-4].
- 12.8.18. **S24**
- 12.8.18.1. Currently northbound users, having crossed the railway at either S23 or S24, would be likely to make their way along one of the slip roads on the southern side of the A14, crossing the A14 using the Coalpit Lane overbridge, before joining up with Footpaths 001, 002 or 013 Higham. In practice, it is unlikely that they would follow more direct routes across the A14, due to traffic levels and speeds [9.13.6]. Comparable north/south connectivity would be provided by the proposed diversion east from S23 and west from S24, both leading to the Coalpit Lane overbridge. Furthermore, insofar as the closure of S23/S24 would reduce the potential for circular walks in the locality, the western diversion from S24 would also facilitate circular walking in the area between the local footpath networks on either side of Coalpit Lane.
- 12.8.18.2. Against that background, notwithstanding SCC's apparent support for it, I consider that there would be no need to provide the eastern diversion from S24. Furthermore, I have found that it would serve a wholly different purpose to S24. It would not provide connectivity between the sections of the local PRow network to the north and south of S23/S24 nor, insofar as S24 may do so, would it facilitate circular walking utilising the PRow network on either side of Coalpit Lane [3.5.18.15-16].
- 12.8.18.3. The proposed eastern diversion could be said to enhance the public rights of way network, in keeping with the aim of local and national policy, by adding another route. However, it would be likely to have a significant adverse impact on the current use of the land along its route for shooting activities, such as commercial game shooting and the testing of rifles and shotguns, associated with neighbouring businesses, including: Forelock and Load; and, Barrow Heath Shooting Ground¹⁰¹⁵. This would conflict with the aims of the Framework insofar as it seeks to support economic growth and promote a prosperous rural economy. I share the view of OBJ/42 that the activities described are unlikely to be compatible with the use of the new adjacent public rights of way proposed [9.13.13-15]. Whilst it may be possible for the businesses to take some measures to manage new risks associated with the proposed rights of way, they would be likely to involve restrictions on current

¹⁰¹⁵ OBJ/42/W1/1 and 2.

business activities. Although compensation may be available to the affected landowners, this would amount to a cost which need not be incurred, given that the route is not justified as an alternative to S24.

[3.5.18.19]

- 12.8.18.4. Removal of the eastern diversion from the Order is not supported by Network Rail. Furthermore, I consider that it would amount to a substantial change to the Order provisions associated with the proposed closure of S24 and may prejudice the interests of others who have not been consulted. Under these circumstances and having had regard to the DfT's '*A Guide to TWA Procedures*'¹⁰¹⁶, I consider that a fresh application would be needed to pursue such an option.
- 12.8.18.5. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions or closure of the crossing [3.5.4.3-4]. I refer in particular to the proposed eastern diversion. I consider that the provisions of the Order related to S24 should be removed.
- 12.8.19. **S25**
SoM3-consistency with policy
- 12.8.19.1. At S25, the railway runs alongside the northern boundary of the Moreton Hall urban extension site (MHUE). Policy CS11ii) of the *St Edmundsbury Core Strategy, 2010* (CS), seeks to ensure that completion of the urban extension enables potential transport links to the north of the railway line. That requirement is re-iterated in the adopted *Concept Statement Moreton Hall Bury St Edmunds*. Policy DM3 of the *Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document, 2015* (LP) requires a Masterplan for the MHUE to accord with the adopted Concept Statement. LP Policy DM2 indicates that development proposals should, as appropriate, '*k. produce designs that provide access for all, and that encourage sustainable forms of transport through the provision of pedestrian and cycle links...*'.
- 12.8.19.2. The Moreton Hall Masterplan, which is consistent with the above requirements, identifies that '*A linear park is to be created along the current Sustrans Route 13 to create an attractive pedestrian and cycle route...The route, part of the existing network of rights of way, will also enable connections between the Masterplan area and the adjoining countryside to the north...*'. With reference to the MHUE Masterplan movement framework, it appears that these requirements have been met by laying out the cycle/footpath network within the site so as to link up with S25, which forms part of the Sustrans Route 13¹⁰¹⁷. Phases 1

¹⁰¹⁶ NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

¹⁰¹⁷ NR/INQ/92 pages 17/18.

and 2 of the MHUE, which are situated adjacent to the railway are at an advanced stage.

- 12.8.19.3. Although the MHUE Masterplan makes reference to a foot/cycle bridge to one side of the route, it is in the context of possible future development by others¹⁰¹⁸. I understand that the Council expects the proposed development of the NEUE, on the northern side of the railway, would include the provision of a bridge to replace S25. In light of the assurances provided by Network Rail, I give no weight to the concern that if S25 is closed, Network Rail may no longer be willing to grant the necessary rights to enable construction of a bridge at this location, or that the financial considerations would be different [3.5.19.8]¹⁰¹⁹. Nonetheless, at the time of the Inquiry, no agreement on that matter between the developer and Network Rail had been finalised and the associated planning application had not been submitted [3.5.19.3]. There is therefore, a considerable degree of uncertainty as to whether and when the bridge might be delivered, as reflected in Network Rail's comment that '*third party developments... can (sometimes) be put on hold for years*'. I give little weight to the possible provision of a bridge at some time in the future.
- 12.8.19.4. As S25 is situated outside of the MHUE site, the above Policies are not directly applicable to the Order proposals [3.5.19.13]. Nonetheless, it is clear that S25 is an important part of the wider transport network that underpins the MHUE movement framework. If the crossing is closed, as proposed, it would sever the existing direct route between MHUE and the countryside/settlements to the north, undermining the adopted MHUE Masterplan movement framework.
- 12.8.19.5. I give little weight to the application, submitted by Taylor Wimpey, for an Order under section 247 TCPA 1990 to stop-up the length of U6318 Cattishall Lane, including the section that links to S25. The associated Order is a draft and SCC has confirmed that it has objected to it¹⁰²⁰.
- 12.8.19.6. In keeping with the aims of the Framework as regards the promotion of sustainable transport and the protection of rights of way¹⁰²¹, LP Policy DM44 indicates that development which would result in the loss of existing or proposed rights of way will not be permitted unless alternative provision or diversions can be arranged which are at least as attractive, safe and convenient for public use.
- 12.8.19.7. Even if, contrary to my finding, the Secretary of State determines that the proposed diversion would be suitable and convenient, thereby encompassing the requirements of LP Policy DM44 as regards safety and convenience, it would not be as attractive in my view. Rather than following the linear park route, which would be largely car free, through

¹⁰¹⁸ NR/INQ/92 page 18.

¹⁰¹⁹ NR/INQ/104.

¹⁰²⁰ OP/INQ/82.

¹⁰²¹ National Planning Policy Framework (2012) section 4 and para 75 superseded by revised National Planning Policy Framework (July 2018 and February 2019) section 9 and para 98.

the Moreton Hall development to S25, residents of that development would have to make use of the highway network to the west of the MHUE¹⁰²². I conclude overall, that the proposal would adversely affect the public rights of way network, to the detriment of the amenity of users and the interests of promoting sustainable transport, contrary to the aims of LP Policy DM44 and the Framework, as well as the SLTP and ROWIP [3.5.19.12, 5.3.2]. I consider that this is a matter of considerable weight.

- 12.8.19.8. It appears to me that CS Policy CS8-*Strategic Transport Improvements*, referred to by SEBC, is of little relevance in this case [3.5.19.14, 7.2.3.2]. It seeks to secure necessary transport infrastructure, as identified in the Infrastructure Delivery Plan, the main focus of which in relation to transport in Bury St Edmunds is highway junction improvements and enhanced bus services¹⁰²³.

Alternative

- 12.8.19.9. OBJ/36 has suggested that rather than using the proposed route on the northern side of the railway between P020 and P021, an alternative footpath route should be followed which reflects the red route shown on the round 1 consultation material¹⁰²⁴. Network Rail rejected this option, as it did not align favourably with the proposed NEUE development and existing Restricted Byway 004 Great Barton was considered to be of a lower standard of surface finish than the existing tarmac surface of Green Lane. I have no compelling reason to depart from that assessment.

Conclusion

- 12.8.19.10. Even if, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met by the proposals associated with S25; I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions or closure of the crossing. [3.5.4.3-4, 3.5.19.15]. I conclude that the provisions associated with the proposed closure of S25 should be removed from the Order.

- 12.8.20. **S27 and S28**

OBJ/8 and 52

- 12.8.20.1. The Order makes provision for Barrell's Road to be temporarily stopped up across its full width over a length that includes the point of access to

¹⁰²² OBJ/36/W5/1 para 4.

¹⁰²³ OBJ/29/C10 pages 468, 526-528.

¹⁰²⁴ NR/32-2 page 91.

Bridge Cottage¹⁰²⁵. If implemented it would be likely to remove the means of access of residents to and from that dwelling, albeit temporarily [10.14.1]. It would also restrict access to the property by the Royal Mail Group Limited [3.5.20.9]. Whilst Network Rail has indicated that the works proposed to be undertaken at Barrell's Road bridge would be unlikely to necessitate closing the road completely¹⁰²⁶, the Order makes provision for it and there is no guarantee that it would not be implemented. I consider that this weighs heavily against the proposals.

OBJ/48

- 12.8.20.2. On the northern side of the railway, Footpath 005 Thurston runs from Barrell's Road to S27 along the western side of a grassed field, which is located between development on either side. This includes residential development to the west and a mixed-use site, Pheasants Mead, to the east, which includes the dwelling and equestrian business of OBJ/48 [9.12.3]. The proposals include the replacement of this section of Footpath 005 Thurston by a new footpath which would run south from Barrell's Road along the eastern side of the same field to Network Rail land and then turn east along the top of the railway embankment towards S28.¹⁰²⁷
- 12.8.20.3. The proposed new footpath does not pass through land owned by OBJ/48. However, they have objected to the proposed route based on concerns with respect to its impact on their living conditions and business as well as the value of their property.
- 12.8.20.4. I consider that their dwelling and its immediate surroundings are sufficiently distant from the alignment of the proposed footpath to ensure that passers-by would be unlikely to have an unacceptable impact on their privacy.
- 12.8.20.5. Much of the boundary between Pheasants Mead and the field to the west is porous, either enclosed by post and rail fencing or not enclosed. OBJ/48 has expressed the concern that dogs on the proposed footpath may stray onto their land and startle their horses, with potentially serious consequences for the horses and anyone handling them. The potential for harm in such circumstances is not disputed by Network Rail. However, in order to mitigate that risk, Network Rail has confirmed that a 1.2 metre high chain link fence would be erected along the eastern side of the footpath [3.5.20.17, 9.12.4]¹⁰²⁸. I consider that this would provide a reasonable level of mitigation to address that concern and also any potential increase in security risk arising from routing the public closer to their property.
- 12.8.20.6. OBJ/48 have a manège in the southwestern corner of their property. They have indicated that existing planting along the southern side of the

¹⁰²⁵ Order sheet 11 S27-Barrell's plot 20.

¹⁰²⁶ NR26 page 96.

¹⁰²⁷ NR26 Appendix F S27.

¹⁰²⁸ NR/INQ/95.

manège would be sufficient to prevent users of the proposed footpath from disturbing horses in the manège¹⁰²⁹. Whilst planting along the western side of the manège is intermittent, there appears to me to be to be space for OBJ/48 to reinforce it, if they considered it necessary. I have also had regard to their concern that horses being led from the stables along their driveway to the paddock at the front of their site may be startled by pedestrians and/or dogs on the northern section of the proposed footpath between P035 and P034¹⁰³⁰. However, the two routes would not be directly alongside one another, limiting any such risk. Furthermore, I saw that OBJ/48's property is extensive and it appears likely to me that they could arrange an alternative route from the stables at the back of the property to the front paddock, if they deemed it necessary.

- 12.8.20.7. There is no compelling evidence before me to support OBJ/48's contention that the proposals would materially harm the value of their property. Nor, having regard to the factors referred to, am I convinced that it would be likely to pose a serious threat to their business.
- 12.8.20.8. OBJ/48 has suggested that rather than using the proposed route between P035 and P034, an alternative footpath route should be followed which runs from Barrell's Road along the line of Footpath 005 Thurston and then turns along the top of the railway embankment to reach P034. This option, which is also supported by SCC [5.4.8.13-14], has been previously considered and rejected by Network Rail, not least due to the landowner's desire to relocate the footpath to the eastern side of his field, for a variety of reasons [3.5.20.5, 5.4.8.11, 9.12.2]. It would also result in a greater loss of railway embankment hedgerow habitat, a matter of concern to another local resident [4.2.1]. I consider that the alternative suggested by OBJ/48 would amount to a substantial change to the Order provisions associated with the proposed closure of S27/S28 and may well prejudice the interests of others, such as affected private landowners, who would not have been consulted on the alternative works. Under these circumstances and having had regard to the DfT's '*A Guide to TWA Procedures*'¹⁰³¹, I consider that a fresh application would be needed to pursue such an option.
- 12.8.20.9. I conclude overall, that the mitigation proposed by Network Rail would strike an appropriate balance between the interests of OBJ/48 and those of others [3.5.20.6].

OBJ/122

- 12.8.20.10. OBJ/122 would prefer that the proposed new footpath on the southern side of the railway follows the boundary of their field, rather than cutting across the corner of the field close to P031¹⁰³². In my view, this would amount to a minor modification of the Order proposals and it would not

¹⁰²⁹ Mrs Brace's oral evidence.

¹⁰³⁰ Order sheet 11 S27-Barrell's.

¹⁰³¹ NR/INQ/63 tab 23 paras 2.47, 3.48-3.51.

¹⁰³² Order sheet 12-S28.

require the inclusion of additional land or rights within the Order, as the corner of the field is already included. Such a change would be unlikely to prejudice the interests of anyone and would be worthy of support in the event that the proposals associated with S27 and S28 were to remain part of the Order. Network Rail has indicated that this modification could be secured by modifying the appropriate entry in column 4 of Schedule 2 of the Order to read '*Footpath between points P029 and P031 [following the field boundary]*' [3.9.1.5, 10.15.1]¹⁰³³.

OBJ/36

- 12.8.20.11. The routes leading to/from S28 already include significant lengths of footpath within sight and sound of passing trains. Against this background, whilst the proposed diversions would include a new length of footpath running alongside the railway's southern boundary, it would be located within the adjacent fields. Furthermore, according to the estimates of the Ramblers' Association, users would only be likely to be passed by 1 or 2 trains. In my judgement, the proposed diversions would not be likely to have a material adverse effect on the attractiveness or tranquillity of the local public rights of way network.

[8.6.8.6-7]

Conclusion

- 12.8.20.12. If, contrary to my finding, the Secretary of State determines that the terms of section 5(6) of the TWA would be met by the proposals associated with S27/S28, they would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. Nonetheless, I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of those crossings [3.5.4.3-4]. I refer in particular to the potential impact on access to Bridge Cottage. I conclude that the provisions associated with the proposed closure of S27 and S28 should be removed from the Order.

12.8.21. **S31**

- 12.8.21.1. OBJ/23 has suggested an alternative diversion route, which would involve providing a new section of footpath on the southern side of the railway, linking Footpath 035 Wetherden to an underpass to the west on Captains Lane and thereby to Footpath 036 Wetherden on the northern side of the railway [9.1.17.1]. Given that the purpose for which S31 is likely to be used is to provide access to the wider footpath network and the limited length of such a diversion, in my view, it would not be inconvenient. However, it is not supported by Network Rail [3.5.23.9]. Furthermore, such a modification would amount to a substantial change to the Order provisions associated with the proposed closure of S31 and may well prejudice the interests of others, such as affected private

¹⁰³³ NR/INQ/131 'Mrs Crack proposal'.

landowners, who have not been consulted on the alternative works. Under these circumstances and having had regard to the DfT's '*A Guide to TWA Procedures*'¹⁰³⁴, I consider that a fresh application would be needed to pursue such an option.

12.8.21.2. If, contrary to my finding, the Secretary of State determines that terms of section 5(6) of the TWA would be met, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions and closure of the crossing [3.5.4.3-4].

12.8.22. **S69**

12.8.22.1. I have concluded, above, that the provisions associated with the proposed closure of S69 should be removed from the Order, primarily as the proposed diversion of users along Broad Road would not amount to a suitable and convenient alternative [12.5.11.5-8]. If the Secretary of State were to reach a different conclusion on that particular matter, the proposal would accord with the aims of local and national policy insofar as they seek to protect the public rights of way network. Nonetheless, in my judgement, a number of other factors weigh against the associated provisions of the Order [9.5.14, 10.7.1, 10.16.1]:

1. Order sheet 21 between P070 and P073-There is an existing footway leading from the entrance to Pretymen Avenue, westwards, to the northern end of Footpath 014 Bacton. I consider that it provides as suitable and convenient a route as the proposed new route between P073-P071. Furthermore, having had regard to the Order plan, site observations and evidence concerning farm machinery, in my judgement, the proposed footbridge would be likely to restrict the existing use of the access track, Pulhams Lane, immediately to the east by large farm machinery [3.5.13.5, 9.5.13, 10.16.1]. There is no evidence before me to show that an alternative route exists or would be provided for such purposes. This would be likely to have a material adverse effect on the associated farming enterprise, contrary to the aims of the Framework insofar as it seeks to support rural businesses.
2. Order sheets 19 and 20 between P061 and P063- For existing users of S13, I consider that, in comparison with the proposed alternative using the new footpath S13-S69/Footpath 013 Bacton/Broad Road and crossing the railway at Pound Hill¹⁰³⁵, a route using the existing PRow network (Footpaths 020/018/022/023/014 Bacton) and crossing the railway at Cow Creek would be likely to provide as suitable and convenient a

¹⁰³⁴ NR/INQ/63 tab 23 paras 3.48-3.51.

¹⁰³⁵ NR/26 Appendix F S69-Bacton.

route. However, I saw that the new footpath (P061-P063) would involve the use of productive agricultural land along the majority of its route, to the detriment of the associated farming enterprise contrary to the aims of the Framework insofar as it seeks to support rural businesses.

3. I understand that compensation may be payable for the likely losses identified in sub-paragraphs 1. and 2. above. Nonetheless, under the circumstances, I consider on balance that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected.
4. Removal of the proposed new routes referred to in sub-paragraphs 1. and 2. above may result in a different conclusion to that reached in sub-paragraph 3.. However, such changes would amount to a substantial modification of the proposals associated with the closure of S69. Furthermore, Network Rail does not support it and has indicated that such a change may prejudice other parties who might have an interest, a view which I share¹⁰³⁶. Therefore, I consider that a fresh application would be needed to pursue such an option.

12.8.22.2. Network Rail proposes changes to temporary possession/access rights associated with Bacton United Football Club, which it has agreed with the landowner. In my judgement, these minor changes would be unlikely to prejudice the interests of anyone [3.9.1.2d)].

12.8.22.3. Nevertheless, even if, contrary to my finding, the Secretary of State determines, having had regard to the PSED, that the terms of section 5(6) of the TWA would be met, with reference to the proposed diversion along Broad Road; I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing [3.5.4.3-4]. I refer, in particular, to the impact of the proposals between P073-P071 and P061-P063. Provisions associated with the closure of S69 should be removed from the Order.

12.8.23. **S22**

Sustainable transport and healthy communities

12.8.23.1. There is no dispute that S22 is used daily by a large number of people and it is highly valued by the community [3.5.17.1-2, 6.2.2, 9.10.7]. As a result of the proposed closure of S22, users would be diverted away from a crossing with a relatively low frequency of passing rail traffic, which links minor roads, also with relatively low traffic flows, onto a more major road and busier highway [9.11.5]. For this reason, I consider that even if, contrary to my finding, the Secretary of State determines that the terms

¹⁰³⁶ NR/INQ/131, Ref. A Guide to TWA Procedures para 2.47, 3.48-51.

of section 5(6) of the TWA would be met, the proposed alternative route would not be as attractive as the route it replaces. [5.4.5.8, 9.11.6.1-3] Furthermore, this alone, irrespective of the question of suitability and convenience, would be likely to deter some users from walking or cycling, resulting in an increase in car usage or people not carrying out the journey at all [3.5.17.13]. As a result, the proposals would be likely to have an adverse impact in terms of public health and the isolation of some individuals, contrary to the aims of the Framework, insofar as it seeks to promote sustainable transport and healthy communities through, amongst other things, the provision of layouts which encourage walking and cycling¹⁰³⁷. The impact in these respects would be even greater if the alternative is judged not to represent a suitable and convenient alternative to S22. [5.4.5.9-16, 9.10.4, 9.10.5, 10.12.2.8]

- 12.8.23.2. Furthermore, in the respects identified, the proposals would also conflict with: the *Suffolk Local Transport Plan, 2011-2031*, insofar as it seeks to facilitate an increase in walking and cycling as one means of addressing its priority of improving the health of communities¹⁰³⁸; and, the aims of the *Cambridgeshire Health and Wellbeing Strategy 2016-17*, with particular reference to promoting sustainable transport links and encouraging walking for physical and mental wellbeing [10.12.2.7, 10.12.2.9].
- 12.8.23.3. The provisions of the CCC RoWIP (part of the CLTP3) drawn to my attention appear not to be directly relevant, not least as they are primarily concerned with countryside access rather than the urban circumstances associated with S22 [10.12.2.6].

¹⁰³⁷ National Planning Policy Framework (2012) section 4 and para 69 superseded by the revised National Planning Policy Framework (July 2018 and February 2019) section 9 and para 91.

¹⁰³⁸ OBJ/27/W1 Rebuttal para 2.6.16, OBJ/29/C11 page 9.

Alternatives

- 12.8.23.4. I understand that the alternatives considered by Network Rail during the development of the proposals included, amongst other things, a path along the southern edge of the track bed westwards towards the underpass on New Cheveley Road. However, it was rejected for a number of reasons, including that it would have required the acquisition of residential land, which Network Rail determined could not be justified. I have no reason to take a different view on that matter. [3.5.17.22]
- 12.8.23.5. Contrary to Network Rail's assertion, based on what I have read, heard and seen, it appears to me that there may well be sufficient space, taking account of Network Rail's land and adjacent highway verges, to replace S22 with a bridge at this location¹⁰³⁹. However, I acknowledge that such works would fall outside the scope of the phase 1 of Network Rail's *Anglia CP5 Level Crossing Reduction Strategy*¹⁰⁴⁰ to be addressed by the Order. Therefore, I give no weight to the potential for a bridge alternative. [3.5.17.18, 6.2.9, 9.10.10, 9.11.2.4, 9.11.8.1, 10.12.1.7, 10.12.4]

Consultation

- 12.8.23.6. I consider it is clear from the evidence presented that the S22 proposals were well publicised. In addition to the work undertaken by Network Rail, publicity included press coverage and petitions organised by objectors. Objections were made by: Cambridgeshire County Council; SCC; FHDC; the local Member of Parliament; Newmarket Town Council; the Ramblers' Association; a number of community groups; and, numerous local residents [6.1.4, 10.12.1]. I acknowledge it is likely that if a consultation event on the S22 proposals had been undertaken in Newmarket, rather than Bury St Edmunds, which is some distance away, the numbers in attendance would have been higher. However, I am not convinced that this would have resulted in a higher number of objections. It may be that had Network Rail availed itself of the opportunity to explain its approach, some would have been dissuaded from their objections. [3.5.17.19, 8.3.6, 9.6.1-2, 9.11.2]
- 12.8.23.7. I consider overall, that the concerns raised with respect to consultation do not weigh against the S22 proposals.

Air quality

- 12.8.23.8. An Air Quality Management Area, situated on Old Station Road, has been in place since 6 April 2009, having been amended on 18 April 2017 to remove the High Street from its scope. At that time the remaining significantly smaller area was retained not due to exceedances of the nitrogen dioxide annual mean objective, but due to a lack of conclusive evidence that the AQMA could be revoked. During the Inquiry, the Council was in the process of collecting that evidence with the expectation that the AQMA would be revoked in 2019. [6.3.2-3]¹⁰⁴¹

¹⁰³⁹ Mr Kenning's oral evidence in particular.

¹⁰⁴⁰ NR18 page 9 para 2.1.2.1

¹⁰⁴¹ NR/32-4-6 Appendix D.

12.8.23.9. I have found that the proposals would be likely to encourage some users of S22 to travel by car instead. However, there are a number of alternative highway routes, which do not include the section of Old Station Road subject to the AQMA, between the area on the southern side of S22 and the area on the northern side of the railway and beyond. Furthermore, Network Rail's census indicates that 23 pedestrian users of S22 were recorded in the busiest quarter hour period of the survey¹⁰⁴². If this were to be repeated throughout a peak hour, when the pollution level in the AQMA would be more likely to be at its worst, it would equate to around 90 trips. I consider that even if a significant proportion of users switched to vehicles, the number of additional trips through the AQMA would be likely to represent a relatively small proportion of peak hour traffic and would be unlikely to have a material impact on air quality in the AQMA. This is a view shared by Network Rail¹⁰⁴³. [6.3.4-5]

Cost to the community

12.8.23.10. I give little weight to OBJ/13's suggested cost to the community. Not least as it is based on the assumption that around 10,000 people use the crossing on a daily basis, whereas the census survey of actual use indicates a level of around 400. [3.5.17.1, 9.11.8]

OBJ/52

12.8.23.11. The Order includes provisions to allow the temporary stopping-up of a section of Granary Road to facilitate works to the footways along either side of the carriageway local to the existing crossing. Network Rail has indicated that only a partial road closure would be required¹⁰⁴⁴. However, even if vehicles were prevented from passing, in my view, the duration of such works would be likely to be relatively short and alternative routes to all premises would be available using the wider highway network¹⁰⁴⁵. The proposals would be unlikely to have a material adverse effect on the ability of Royal Mail Group Limited to fulfil its duties as regards to the collection and delivery of mail. [3.5.17.10]

Level crossing safety risk

12.8.23.12. Network Rail acknowledges that, with reference to the 3 aspects of its strategic case, the contribution made by the closure of a particular crossing to each aspect may vary. In relation to S22, Network Rail indicates that the reduction in level crossing safety risk which would be associated with the proposed closure is of particular relevance [3.5.17.9]. Whilst a large proportion of the FWI saving associated with the Order, as a whole, would be attributable to the closure of S22, in my judgement, it represents a large proportion of a relatively small overall benefit, to which, as I have previously indicated, I attach little weight. [3.5.17.3, 6.1.5-7]

¹⁰⁴² NR25 S22 page 4.

¹⁰⁴³ NR/INQ/37 page 143 and NR/32-4-6 section 2.4.

¹⁰⁴⁴ NR26 page 84.

¹⁰⁴⁵ NR/INQ/36.

12.8.23.13. Although a train struck and fatally injured a person at S22 in 2015, the cause of death was recorded as suicide. Network Rail's records indicate that whilst in the period March 2006 to November 2016 there were 6 near misses at S22¹⁰⁴⁶, 4 have been recorded in less than 6 months in 2017 [3.5.17.3, 9.6.5, 9.9.4]. Network Rail indicated that a near miss may be recorded in circumstances such as: the train's emergency brake being applied; or, if a pedestrian moving towards the crossing steps back when the train driver sounds the horn¹⁰⁴⁷. However, a local resident has indicated that he has noticed train drivers sounding horns more frequently recently, including when people are behind the crossing gates waiting to cross [10.12.4]. Based on the available evidence, I am not convinced that Network Rail's record of an increased frequency of near misses at S22 provides a reliable indication of an increased likelihood of accidents there.

Conclusion

12.8.23.14. Even if, contrary to my finding, the Secretary of State determines, having had regard to the PSED, that the proposed alternative route would constitute a suitable and convenient replacement for S22; I conclude on balance that, having had regard to Network Rail's strategic case and the other matters raised, including national and local policy, there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing [3.5.4.3-4]. I make particular reference to sustainable transport and healthy communities. I conclude that the provisions of the Order associated with S22 should be removed from the Order.

12.9. **Protective provisions-SoM5**

12.9.1. ***OBJ/51-The Environment Agency (EA)***

12.9.1.1. Schedule 11 of the Order, as submitted on the first day of the Inquiry (NR/INQ/3a), sets out provisions for the protection of drainage authorities, including the Environment Agency. Section 2(1) of Schedule 11 (section 41(1) of the original draft Order) indicates that '*Before beginning to construct any specified work, Network Rail must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.*'

12.9.1.2. Section 2(3) deals with approvals of the drainage authority. Sub-section (b) indicates that any approval of the drainage authority '*is deemed to have been given if it is neither given nor refused with 2 months of the receipt of the plans for approval and, in the case of refusal, accompanied by a statement of the grounds of refusal*'. The Environment

¹⁰⁴⁶ NR26 page 82.

¹⁰⁴⁷ Mr Kenning in response to Inspector's questions.

Agency considers that rather than providing for 'deemed approval' this sub-section should provide for 'deemed refusal'.

12.9.1.3. I have had regard to the submissions made on this matter by the parties [3.9.2, 10.17.1]. I share the view of Network Rail that, as the position regarding disapplication of legislation under Development Consent Orders (DCOs) is different to that for TWA orders, past practice in relation to DCOs is of little relevance. Furthermore, contrary to the view of Network Rail, in my view, deemed refusal would not amount to an impediment to the Order, in the absence of any evidence to suggest that approval would be likely to be withheld.

12.9.1.4. Nonetheless, it appears to me that, in this particular case, the points of potential interface between the proposed works and any drainage are likely to be small in number and any specified work is unlikely to be either complex or extensive. Under these circumstances, I consider that a period of 2 months before deemed consent is considered to have been given would provide adequate protection for the interests overseen by drainage authorities, including the Environment Agency. Modification of the Order to provide for deemed refusal would not be justified in this particular case.

12.9.2. ***OBJ/52-Royal Mail Group Limited***

12.9.2.1. I have dealt with the crossing specific concerns raised by OBJ/52 above. In summary, the proposals would be unlikely to have a material adverse effect on the ability of the Royal Mail Group Limited to fulfil its duties as regards the collection and delivery of mail.

12.10. **Other proposed modifications-SoM10**

12.10.1. Towards the end of the Inquiry, I conducted a 'round-table discussion' regarding modifications proposed by the parties, a number of which have already been considered under crossing specific matters above.

12.10.2. During the course of the Inquiry, Network Rail has promoted a number of proposed amendments to the Order, the third version of which (Order Modification 3-OM3) includes the previous 2 amendments (Order Modifications 1 and 2-OM1 and 2).

12.10.3. Order Modification 1 (OM1)-in the form of a filled-up Order, dated 13 February 2018, and plans (NR/INQ/3a & b), included the following amendments:

- a) The withdrawal of the proposals for crossing S05-Pannington Hall¹⁰⁴⁸;

¹⁰⁴⁸ OBJ/56 is an objection to details associated with the proposed closure of this crossing and so has not been considered further.

- b) The withdrawal of proposed powers over plot 5 in the Parish of Finningham (S16) and over plot 26 in the Parish of Elmswell (S30);
- c) A reduction of the extent of the powers over plot 2 in the Parish of Gislingham (S17) to mean that Network Rail is only seeking a right of access over the extent of Coldham Lane that is not publicly maintainable by the Highway Authority;
- d) The withdrawal of plot 7 in the Parish of Mellis (S21);
- e) The withdrawal of plot 25 in the Parish of Elmswell (S30);
- f) Amendment of Schedules 2, 3, 4 & 5 to reflect the re-designation of existing highway to bridleway as opposed to the creation of a new PRow at S25;
- g) Amendments to Articles 19-21 and related Schedules, in light of the changes to compulsory purchase legislation contained within the *Housing and Planning Act 2016*, to reflect the provisions contained within the *Network Rail (Buxton Sidings Extension) Order 2017/1150*;
- h) Amendment to Article 33 and Schedule 11 (protective provisions for drainage boards and the Environment Agency) to reflect discussions with the Environment Agency;
- i) Insertion of a new sub-paragraph (1) to Article 27, omitted in error; and,
- j) Correction of typographical errors/cross references.

There were no objections to these modifications.

12.10.4. Order Modification 2 (OM2)-in the form of a filled-up Order, dated 6 April 2018 (NR/INQ/86 including further explanation), included the following further amendments:

- a) Article 25-has been deleted (set-off for enhancement in value of land), due to amendments in the *Neighbourhood Planning Act 2017* to the *Land Compensation Act 1961*, which have come into force rendering the Article redundant (and any consequential changes to cross-referencing of Articles);
- b) Article 16- has been amended so that the start date for the six-month claim period for compensation as a result of a new public right of way coming into use runs for six months from the date of the new right of way being brought into operation; and,
- c) A change to the Explanatory Note to the Order as to the location for public inspection of the Order plans and Book of Reference referred to in the Order.

There were no objections to these modifications.

Order Modification 3 (OM3)

- 12.10.5. Order Modification 3 (OM3)-in the form of a filled-up Order, dated 21 May 2018, and plans (NR/INQ/113 including further explanation), included the following further amendments:
- a) Order plans-Following SCC's identification that in some instances public rights of way shown on the original Order plans (along with associated 'P' and 'R' points) are slightly out of position as against the Definitive Map and SCC's confirmation of necessary amendments, Network Rail has provided a corrected set of plans. Details of the changes are set out in Network Rail's *Note Regarding Order plans dated 21 May 2018*¹⁰⁴⁹. The Note also confirms that Network Rail has written to affected landowners to explain the corrections and confirm that their land would not be affected any differently; the powers sought remain unchanged in relation to this matter;
 - b) Article 9-As a result of the adjustments made to the Order plans, set out above, the sequence of 'P' points referred to in Article 9(1)(a) has been changed, with P056A preceding, rather than following, P056. For the same reason, in Article 9(1)(b) P057 has been removed, as it is no longer required;
 - c) Article 11(2)- has been deleted, as the proposals do not involve the construction of a new street and altered streets are dealt with by Article 11(3);
 - d) Schedule 2 Part 1-
 - (i) In the entry of the Parish of Bacton in the fourth column the 'A' in 'P062A' has been deleted to correct a typographical error; and,
 - (ii) In the entry for the Parish of Brantham, an amendment has been made to the third column to provide for the retention of the western section of Footpath 13 Brantham between P159 and P160, at SCC's request. [3.5.6.15]
 - e) Schedule 4- In the entry for the Parish of Elmswell plot 13 has been deleted, as agreed with the landowner (NR/INQ/100 and 101); [3.5.21.3]
 - f) Schedule 5- In the entry for the Parish of Elmswell plots 11 and 12 have been deleted, as agreed with the landowner (NR/INQ/100 and 101); [3.5.21.3]
 - g) Schedule 8-
 - (i) The cross reference to Schedule 9 has been corrected to Schedule 10 (NR/INQ/84-page 3 last paragraph); and,

¹⁰⁴⁹ NR/INQ/113.

(ii) In the entry for the Parish of Brantham the third column has been amended to allow for the retention of the western section of Footpath 013 Brantham between P159 and P160, at SCC's request.

h) Article 16A- has been inserted, which provides that the Highway Authority and Network Rail may enter into agreement with respect to various matters (specific examples of what such agreements may include being included in Article 16A(2)). This provision is intended to provide transparency to the Side Agreement which has been agreed between Network Rail and SCC, and to make clear the matters which may be the subject of such an agreement. It has been agreed between SCC and Network Rail (NR/INQ/129 vol 2 page 6) [3.9.1.2, 5.4.2.2].

There were no objections to these modifications, which I will refer to as OM3.

Order Modification 4 (OM4)

12.10.6. Network Rail has requested that the provisions associated with crossing S07-Broomfields be removed from the Order [3.5.10].

12.10.7. I will refer to this modification as OM4.

Order Modification 5 (OM5)

12.10.8. As a result of the amendments detailed in OM3, and included in the filled-up Order dated 21 May 2018, SCC no longer pursues any further modification to the Order, apart from the removal of provisions related to the 8 crossing closures to which it objects: S01; S02; S22; S23; S25; S27; S31; and, S69 [5.1.4-5, 5.4.2.2]. In addition to those crossings, the Ramblers' Association seeks the removal of crossings S24 and S28. As well as those crossings, I have found that the provisions related to 3 other crossings should also be removed: S03; S08; and, S13.

12.10.9. I will refer to the removal from the Order of provisions associated with the closure of crossings: S01; S02; S03; S08; S13; S22; S23; S24; S25; S27; S28; S31; and, S69, as OM5.

12.11. **Conditions-SoM7**

12.11.1. The original Schedule 1 of the *Request for a Direction* under section 90(2A) of the *Town and Country Planning Act 1990* lists 9 conditions which Network Rail suggested should be attached to the requested Direction¹⁰⁵⁰. Following discussions with SCC, Network Rail provided a revised version¹⁰⁵¹ prior to the 'round-table' discussion of conditions on 23 May 2018 and a further version¹⁰⁵² to reflect matters agreed during

¹⁰⁵⁰ NR10.

¹⁰⁵¹ NR/INQ/115.

¹⁰⁵² NR/INQ/140.

that discussion on the 25 May 2018. I have considered the proposed conditions in light of the six tests of conditions set out in the *National Planning Practice Guidance*.

- 12.11.2. Condition no. 1 would be required to set a reasonable time limit for the commencement of development. Condition no. 2 would be necessary, in order to ensure that the design and external appearance of the proposed footbridges would be acceptable, in the interests of visual amenity as well as the amenity of users. At the Inquiry, Network Rail explained that the works may involve the re-profiling of ground levels to form footpath routes, some of which are adjacent to existing planting, including some mature trees ^[3.5.7.6-10]¹⁰⁵³. Under these circumstances, condition nos. 3, 4 and 5, requiring a landscaping scheme to be submitted for approval and thereafter implemented and maintained, would be necessary in order to safeguard planting in the interests of visual amenity. I consider that it would be necessary, in the interests of enforceability, to ensure that the scheme would include an implementation programme. ^[3.6.1-2]
- 12.11.3. Condition no. 7 requires development to be carried out in accordance with the *Precautionary Method of Works: Legally Protected Species, 25 May 2018*, unless adherence to a revised version is approved in writing by SCC. This is necessary in order to satisfactorily protect ecological value local to the works. Condition no. 6, which seeks to protect nesting birds, is no longer necessary, as adequate safeguards are provided by condition no. 7. ^[3.6.1]
- 12.11.4. SCC has confirmed that, having checked its records, it is content that the proposals would be unlikely to harm any of sites of archaeological importance and therefore, a condition seeking to control the impact of the proposals on archaeology is not necessary. I have no reason to take a different view. Condition no. 8, which would limit the hours during which construction works would be undertaken on land outside Network Rail's ownership, would be necessary in the interests of protecting the amenity of local residents. As set out in Mott Macdonald's Environmental Assessment Summary Note, I consider that such works should be prohibited on Sundays and Bank Holidays, notwithstanding that they are likely to be relatively short in duration¹⁰⁵⁴.
- 12.11.5. Condition no. 9 would not be necessary, as a requirement that any agreement or approval given by the local planning authority is given in writing would be more appropriately incorporated into the individual conditions, where necessary.
- 12.12. **Statutory procedural requirements-SoM9**
- 12.12.1. Some objectors have raised concerns with respect to the public consultation undertaken by Network Rail. However, there is no compelling evidence before me to show that Network Rail has not

¹⁰⁵³ OP/INQ/106.

¹⁰⁵⁴ NR/32-2 Tab 8 page 206 para 3.

complied with the statutory requirements for consultation under the *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006*¹⁰⁵⁵. Furthermore, it is expressly agreed by SCC that those requirements have been met. [3.8.4, 9.11.2.2-3] I am satisfied that is the case.

12.13. **The Public Interest-Conclusions**

Section 5(6) of the TWA

12.13.1. *A) Crossings: S01; S02; S03; S08; S23; S24; S25; S27; S28; S31; and, S69.*

I conclude that the requirements of section 5(6) of the TWA would not be met in relation to these crossings. Therefore, the provisions related to these crossings should be removed from the Order.

Public interest

12.13.2. *B) Crossing S22.*

I conclude that a suitable and convenient alternative to this crossing would not be either provided under the terms of the Order or otherwise available. It was common ground at the Inquiry that, under such circumstances the provisions of the Order related to that crossing should also be removed, as suggested by Network Rail.

In any event, having had regard to Network Rail's strategic case and the other matters raised, I conclude on balance that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing. The provisions related to that crossing should be removed from the Order.

12.13.3. *C) Crossing S13.*

I conclude that the requirements of section 5(6) of the TWA would be met in relation to this crossing. Nonetheless, having had regard to Network Rail's strategic case and the other matters raised, I conclude on balance that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected or closure of the crossing. The provisions related to that crossing should be removed from the Order.

¹⁰⁵⁵ NR/INQ/1-Compliance with Statutory Procedures.

12.13.4. *D) Crossings: S04; S11; S12; S16; S17; S18; S21; S29; and, S30.*

I conclude that the requirements of section 5(6) of the TWA would not be applicable to S21 and would be met in relation to these other crossings. Having had regard to Network Rail's strategic case and the other matters raised, I conclude on balance that, subject to OM3, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions and closure of those crossings.

E) The Order

I conclude overall, that it would be in the public interest for the Order to be amended in accordance with OM3, OM4 and OM5, and then made.

For the avoidance of doubt, I conclude on balance that it would not be in the public interest for the Order either as originally drafted or subject only to the modifications supported by Network Rail, OM3, to be made.

G) Deemed Planning Permission

Subject to amendments OM3, OM4 and OM5, I conclude that the Order proposals would be consistent with National and Local Planning (including environment) Policy and Transport policy, and any harm would be outweighed by the Scheme's overall benefits. I consider it would be appropriate for a Direction to be issued that planning permission for the reduced scope of the Order (i.e. Subject to amendments OM3, OM4 and OM5) be deemed to be granted, subject to the conditions set out in Appendix 8 of this report.

If the Secretary of State disagrees with my conclusion A)

12.13.5. Alternatively, if the Secretary of State disagrees with my conclusion A), with particular reference to section 5(6) of the TWA '*suitable and convenient*':

- 1) Crossings: S03; S24; S25; S27; S28; and S69. Even if the terms of section 5(6) of the TWA would be met in relation to these crossings; having had regard to Network Rail's strategic case and the other matters raised, I conclude on balance that there would not be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions or closure of those crossings. The provisions related to those crossings should be removed from the Order; and,
- 2) Crossings: S01; S02; S08; S23; and, S31. If the terms of section 5(6) of the TWA would be met in relation to these crossings; I conclude on balance that, subject to OM3, there would be a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the associated Order provisions and closure of these crossings; and,
- 3) I conclude on balance that, subject to OM3, OM4 and the removal of provisions related to S03; S13; S24; S25; S27; S28; S69; and,

S22, the Order should be made, and it would be appropriate for a Direction to be issued that planning permission for the reduced scope of the Order be deemed to be granted, subject to the conditions set out in Appendix 8 of this report.

13. INSPECTOR'S RECOMMENDATIONS

- 13.1. I recommend that the *Network Rail (Suffolk Level Crossing Reduction) Order 201[X]* as drafted should not be made.
- 13.2. I recommend that, subject to amendments OM3, OM4 and OM5, the *Network Rail (Suffolk Level Crossing Reduction) Order 201[X]* should be made and an associated Planning Direction, subject to conditions, be given.

I Jenkins
INSPECTOR

APPENDIX 1-APPEARANCES

For **Network Rail**:

Jacqueline Lean
of Counsel

She called

Mark Brunnen	Network Rail
Eliane Algaard (Dr)	Network Rail
Andrew Kenning	Network Rail
Sue Tilbrook	Mott MacDonald
John Prest	Network Rail
Nigel Billingsley	Bruton Knowles

For **Suffolk County Council-OBJ/29 (SCC), Forest Heath District Council-OBJ/27 (FHDC) & St Edmundsbury Borough Council-OBJ/28 (SEBC)**:

Merrow Golden
of Counsel

She called

Steve Kerr	SCC
Annette Robinson	SCC
Andrew Woodin	SCC
Andrew Haunton	Capital Traffic Management Ltd.
Glyn French	SCC
Andrew Murray-Wood	SCC
Sara Noonan	FHDC
Peter White	SEBC

For **The Ramblers' Association-OBJ/36 (RA)**:

Sue Rumfitt

She called

John Russell	Motion Consulting Ltd.
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Derek de Moor	RA
Geoffrey Knight	RA
Philip Prigg	RA
Robert Boardman	RA
Jenny Bradin	RA
Derek Fisher	RA

For **Newmarket Town Council-Obj/03 (NTC):**

Warwick Hirst (Councillor)	NTC
Peter Hulbert (Councillor) Assisted by Roberta Bennett	NTC
Michael Jefferys (Councillor)	NTC

For **Mairi Jean Johnston & Alistair Fish-Obj/42 (JF):**

Nigel Farthing
Solicitor

he called

Charles Lloyd	Strutt and Parker
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For other **Objectors:**

Louise Staples	National Farmers Union-Obj/32
Sarah Caldwell	David Caldwell-Obj/60
Gordon Crosby	Obj/34
Paul Baker	EH Baker, MA Baker & PE Baker-Obj/26
David Barker	Suffolk Local Access Forum-Obj/23
Ann Dunning	Newmarket Ladies Open Door Group-Obj/18
Patricia Collins	Obj/19
Michael Smy	Obj/16
Rachel Wood (Dr)	Obj/84

Philip Hodson	OBJ/13
Mrs P Brace	OBJ/48

APPENDIX 2-CORE DOCUMENTS

CORE DOCUMENTS	
NETWORK RAIL	
NR1	Application
NR2	Draft Network Rail (Suffolk and Others Level Crossing Reduction) Order
NR3	Explanatory Memorandum
NR4	Statement of Aims
NR5	Statement of Consultation
NR6	Funding Statement
NR7	Estimate of Costs
NR8	Works Land and Rights of Way Plans and Section Plans
NR9	Book of Reference
NR10	Planning Statement, which provides a description of the scope and purpose of the Application in relation to relevant legislative requirements, and planning policy
NR11	Screening Decision Letter, which confirms that under the EIA Regulations the scheme has been deemed as having no significant impact on the environment and therefore does not require an Environmental Statement
NR12	Design Guide which outlines the design proposal principles and components, including drawings for each level crossing
NR13	Management of Health and Safety at Work Regulations 1999 (tab 1)
NR14	ORR: Strategy for regulation of health and safety risks – 4: Level crossings (tab 2)
NR15	ORR: Periodic Review 2013: Final determination of Network Rail’s output funding for 2014–19. Extracts relevant to level crossings
NR16	Road Safety Audits for Suffolk (tab 4)
NR17	Transforming Level Crossings 2015–2040 (tab 5)
NR18	Client Requirements Document Anglia CP5 Level Crossing Reduction Strategy (tab 6)
NR19	CP5 Level Crossing Risk Reduction Fund Criteria, Governance and Reporting (tab 7)
NR20	Network Rail Standard NR/L1/XNG/100: Level crossing asset management policy (tab 8)
NR21	Network Rail Standard NR/L2/SIG/19608: Level crossing asset inspection and implementation of minimum actions codes (tab 9)
NR22	Network Rail Operations Manual NR_L3_OCS_041_5-16: Risk Assessing Level Crossings (tab 10)
NR23	Network Rail Level Crossing Guidance 01: Completion of Site Visit and Census Forms (tab 11)
NR24	Anglia Route Study (March 2016) (tab 12)
NR25	Censuses of Suffolk sites (tab 13)
NR26	Network Rail Statement of Case
SUFFOLK COUNTY COUNCIL	

CORE DOCUMENTS	
OBJ/29/C1	A Joint Health and Wellbeing Strategy for Suffolk: Refreshed for 2016 – 2019
OBJ/29/C2	Bury St Edmunds – Inset 1 (February 2015)
OBJ/29/C3	Bury St Edmunds: Vision 2031
OBJ/29/C4	Commuted Sums for Maintaining Infrastructure Assets
OBJ/29/C5	Cycling and Walking Investment Strategy (March 2016)
OBJ/29/C6	Green Access Strategy Policies and Action Plan (Draft)
OBJ/29/C7	Highway Infrastructure Asset Management Plan (2016)
OBJ/29/C8	Highway Infrastructure Asset Management Strategy (November 2015)
OBJ/29/C9	Rights of Way Improvement Plan 2006 - 2016
OBJ/29/C10	St Edmundsbury Core Strategy: Local Development Framework (December 2010)
OBJ/29/C11	Suffolk Local Transport Plan 2011 – 2031: Part 1 – Transport Strategy
OBJ/29/C12	Suffolk Rail Prospectus
OBJ/29/C13	Suffolk Walking Strategy 2015 - 2020
OBJ/29/C14	Suffolk's Nature Strategy
OBJ/29/C15	Transforming Suffolk: Suffolk's Community Strategy 2008 – 2028

APPENDIX 3 – LETTERS OF OBJECTION, SUPPORT AND REPRESENTATION

	LETTERS OF OBJECTION
OBJ/1	Mr G Bettley-Cooke
OBJ/2	Miss J D Curtis
OBJ/3	Newmarket Town Council
OBJ/4	Ms M Hunt
OBJ/5	Bacton United '89 FC - Mr M Feavearyear
OBJ/6	W King
OBJ/7	Mr R Wolfe
OBJ/8	Mr and Mrs A Noble
OBJ/9	Mr P Hunt
OBJ/10	Ms R Kent
OBJ/11	Mr J Black on behalf of David Black & Son Ltd
OBJ/12	Mrs O Bowler
OBJ/13	Mr P Hodson
OBJ/14	Ms S Deering
OBJ/15	Mr S Whiting
OBJ/16	Mr M Smy

OBJ/17	Mr D Wright
OBJ/18	Mrs A Dunning on behalf of Newmarket Ladies Open Door Group
OBJ/19	Mrs P Collins
OBJ/20	Mr C Abbott
OBJ/20-1	Mr C Abbott additional correspondence
OBJ/21	Mr T Hill QC
OBJ/22	Mr J Finbow on behalf of Finbows Bacton 1991 Ltd
OBJ/23	Ms S Morling on behalf of Suffolk Local Access Forum
OBJ/24	Mrs R Newell - Bacton Parish Council
OBJ/25	Mr B Crossman - Orwell Park Estates on behalf of Orwell Settlement Trustees
OBJ/26	Mr E Baker on behalf of Messrs E Hudson Baker, Mabel Anne Baker and Paul Edmund Baker
OBJ/27	Cllr L Stanbury on behalf of Forest Heath District Council
OBJ/28	Cllr A Pugh on behalf of St Edmundsbury Borough Council
OBJ/29	Mr A Dunn on behalf Suffolk County Council
OBJ/30	Mr P Butler
OBJ/31	Ms H Butler
OBJ/32	Ms H Carrington on behalf of the National Farmers' Union
OBJ/33	Mr & Mrs P B Mellor
OBJ/34	Mr G Crosby
OBJ/35	Mr G MacLellan on behalf of Mellis Common Rightholders Association
OBJ/36	Mr E Suggett on behalf of the Ramblers' Association
OBJ/37	Mr & Mrs C Hull
OBJ/38	Ms S Wall
OBJ/39	Mr R Leeks
OBJ/40	Mr S Gooderham - Cheffins on behalf of John Creasy Gooderham
OBJ/41	Rt Hon M Hancock MP
OBJ/42	Mr C Lloyd on behalf of Mrs Mairi Jean Johnston & Alistair Fish
OBJ/43	Mr P A Reeve on behalf of Gt Barton Parish Council
OBJ/44	Mr E Keeble on behalf of John R Keeble & Son (Brantham) Limited
OBJ/45	Mrs F Cadman
OBJ/46	Dr J B H Box
OBJ/47	Mr C Joyce
OBJ/48	Mr & Mrs P Brace
OBJ/49	Cllr J Van Der Toorn
OBJ/50	Ms J Wicks
OBJ/51	Ms L Mutua on behalf of Environment Agency
OBJ/52	Ms D Mockett - BNP Paribas on behalf of Royal Mail Group Limited

OBJ/53	Mr C Hewett - Taylor Wimpey UK Limited
OBJ/54	Ms G Forsyth
OBJ/55	Mr & Mrs M Spence
OBJ/56	Mr S Aldous
OBJ/57	Mr N Battell
OBJ/58	Ms S Beckett on behalf of Newmarket Neighbourhood Plan Steering Group
OBJ/59	Mrs C S Box
OBJ/60	Ms C Ramsden - Birketts LLP on behalf of Mr David Caldwell
OBJ/61	Mr G Hughes on behalf of Cambridgeshire County Council
OBJ/62	Mr A Taylor-Jones
OBJ/63	Mr J Nicholson
OBJ/64	Mr and Mrs A & S Coe
OBJ/65	Ms E Thorpe
OBJ/66	Mrs L E Jacobs
OBJ/67	Mr and Mrs F & J Biggs
OBJ/68	Mr S Rehling
OBJ/69	Mr D Turner
OBJ/70	Mr & Mrs Jacobs
OBJ/71	Mr R Fort
OBJ/72	Mr F Bendon
OBJ/73	Ms C Hayward
OBJ/74	Mr R Morgan
OBJ/75	Ms K Cousins
OBJ/76	Ms E Wass
OBJ/77	Ms L E Mangles
OBJ/78	The Occupier
OBJ/79	Ms G Davies
OBJ/80	Mrs P Claydon
OBJ/81	Ms H Wass
OBJ/82	Mr R Dorman
OBJ/83	Brantham Parish Council
OBJ/84	Dr R Wood
OBJ/85	Rhian Bayliss
OBJ/86	Mrs P Ashwell
OBJ/87	Mrs P Wheeler
OBJ/88	Mr & Mrs Furze
OBJ/89	Mr I Bell
OBJ/90	J E Davidson

OBJ/91	M A Beaven
OBJ/92	M Griffiths
OBJ/93	Mr & Mrs Southey
OBJ/94	Mrs D Bright
OBJ/95	Mrs H Erskine
OBJ/96	J Stewart
OBJ/97	Mr E O'Brien
OBJ/98	Mr & Mrs Beamond
OBJ/99	Ms L E Holwill
OBJ/100	Mr & Mrs Wilsoncroft
OBJ/101	Mr & Mrs Landymore
OBJ/102	Mr & Mrs Ellis
OBJ/103	The Occupier
OBJ/104	Mr K Hoddy
OBJ/105	Mr J Reay-Young
OBJ/106	Mr & Mrs Cartwright
OBJ/107	Ms S Perry
OBJ/108	Mr & Mrs Wilson
OBJ/109	Mr & Mrs McKernan
OBJ/110	Mrs C Camps
OBJ/111	Ms J K Read
OBJ/112	F W Barter
OBJ/113	Mr P Golding
OBJ/114	Mr & Mrs G Hall
OBJ/115	Dr S Bailey
OBJ/116	Cllr W Hirst
OBJ/117	Jockey Club Estates Ltd
OBJ/118	Tony Franklin Consultants
OBJ/119	Mrs J Watson
OBJ/120	Ms C Watson
OBJ/121	Mr J Smith
OBJ/122	Mr & Mrs Crack (see OP/INQ/95)
OBJ/123	Mrs Carol Milward (see OP/INQ/98)
OBJ/124	Mr & Mrs Bagshaw (see OP/INQ/101)
	LETTERS OF SUPPORT
SUPP/1	Ms L Lowe
SUPP/2	Mr S Roger

SUPP/3	Old Newton with Dagworth & Gipping Parish Council
LETTERS OF REPRESENTATION	
REP/1	East & Suffolk Water
REP/2	Tarmac Trading Ltd
REP/3	Historic England

APPENDIX 4 – STATEMENTS OF CASE (SoC)

OBJ/18	Ann Dunning, Newmarket Ladies Open Door Group
OBJ/19	Patricia Collins
OBJ/23	Suffolk Local Access Forum
OBJ/24	Bacton Parish Council
OBJ/25	Orwell Settlement Trustees
OBJ/26	Messrs E Hudson Baker, MA Baker and PE Baker
OBJ/27	Forest Heath District Council
OBJ/29	Suffolk County Council
OBJ/30	Mr & Mrs P Butler
OBJ/31	Mr & Mrs P Butler
OBJ/32	National Farmers Union
OBJ/34	Gordon Crosby
OBJ/36	The Ramblers' Association
OBJ/37	Mr & Mrs Hull
OBJ/42	Mrs M Johnston & Mr A Fish
OBJ/48	Mr & Mrs Brace
OBJ/60	David Caldwell
OBJ/83	Brantham Parish Council

APPENDIX 5 – PROOFS OF EVIDENCE

NETWORK RAIL Original Proofs	
Mark Brunnen	
NR/27-1	Proof of Evidence
NR/27-2	Appendices
NR/27-3	Summary
Eliane Algaard	
NR/28-1	Proof of Evidence
NR/28-2	Appendices
NR/28-3	Summary
Nigel Billingsley	
NR/29-1	Proof of Evidence
NR/29-2	Appendices
NR/29-3	Summary
Andrew Kenning	
NR/30-1	Proof of Evidence
NR/30-2	Appendices
NR/30-3	Summary
John Prest	
NR/31-1	Proof of Evidence
NR/31-2	Appendices
NR/31-3	Summary
Sue Tilbrook	
NR/32-1	Proof of Evidence
NR/32-2	Appendices
NR/32-3	Summary
NR/Index	Objection letter summaries and Network Rail proof of evidence responses
NETWORK RAIL Rebuttal Proofs	
Nigel Billingsley	
NR/29-4-1	Rebuttal to National Farmers Union
NR/29-4-2	Rebuttal to S29 – Hawk End Lane
Andrew Kenning	
NR/30-4-1	Rebuttal to Suffolk County Council
NR/30-4-2	Rebuttal to National Farmers Union
NR/30-4-3	Rebuttal to S01 – Sea Wall
NR/30-4-4	Rebuttal to S02 – Brantham High Bridge
NR/30-4-5	Rebuttal to S03 – Buxton Wood
NR/30-4-6	Rebuttal to S12 – Gooderham’s, S13 – Fords Green and S69 – Bacton
NR/30-4-7	Rebuttal to S22 – Weatherby
NR/30-4-8	Rebuttal to S25 – Cattishall
John Prest	

NR/31-4-1	Rebuttal to S23 – Higham
Sue Tilbrook	
NR-32-4-1	Rebuttal to Ramblers’ Association
NR-32-4-2	Rebuttal to Suffolk County Council
NR-32-4-3	Rebuttal to S01 – Sea Wall
NR-32-4-4	Rebuttal to S02 – Brantham High Bridge
NR-32-4-5	Rebuttal to S12 - Gooderhams, S13 – Fords Green and S69 – Bacton
NR-32-4-6	Rebuttal to S22 – Weatherby
NR-32-4-7	Rebuttal to S23 – Higham and S24 – Higham Ground Frame
NR-32-4-8	Rebuttal to S25 – Cattishall
NR-32-4-9	Rebuttal to S27 – Barrell’s and S28 – Grove Farm
OTHER PARTIES’ Original proofs	
OBJ/3 - Newmarket Town Council	
Warwick Hirst (Councillor)	
OBJ/3/W1/1	Proof of Evidence
OBJ/3/W1/2	Appendix
OBJ/3/W1/3	Summary Proof of Evidence
Peter Hulbert (Councillor)-assisted by Roberta Bennett	
OBJ/3/W2/1	Proof of Evidence
OBJ/3/W2/2	Appendix
OBJ/13 – Philip Hodson	
OBJ/13/W1/1	Proof of Evidence
OBJ/23 Suffolk Local Access Forum	
David Barker	
OBJ/23/W1/1	Proof of Evidence
OBJ/26 – Messrs EH Baker, MA Baker and PE Baker	
Paul Baker	
OBJ/26/1	Proof of Evidence
OBJ/26/2	Appendix 1
OBJ/26/3	Appendix 2
OBJ/26/4	Summary Proof of Evidence
OBJ/27 & 28 – Forest Heath District Council/St Edmundsbury Borough Council	
Sara Noonan	
OBJ/27/1	Proof of Evidence
OBJ/27/2	Appendices
OBJ/27/3	Summary
Peter White	
OBJ/28/W1/1	Proof of Evidence
OBJ/28/W1/2	Appendices
OBJ/28/W1/3	Summary
OBJ/29 – Suffolk County Council	
Stephen Kerr	
OBJ/29/W1	Proof of Evidence

OBJ/29/W1/S	Summary
OBJ/29/W1/AP1	Appendix 1
OBJ/29/W1/AP2	Appendix 2
OBJ/29/W1/AP3	Appendix 3
Andrew Woodin	
OBJ/29/W2/S22	S22 – Proof of Evidence
OBJ/29/W2/S22/S	S22 – Summary
OBJ/29/W2/S22/AP1	S22 – Appendix 1
OBJ/29/W2/S22/AP2	S22 – Appendix 2
OBJ/29/W2/S22/AP3	S22 – Appendix 3
OBJ/29/W2/S23	S23 – Proof of Evidence
OBJ/29/W2/S23/S	S23 – Summary
OBJ/29/W2/S23/AP1	S23 – Appendix 1
OBJ/29/W2/S25	S25 – Proof
OBJ/29/W2/S25/S	S25 – Summary
OBJ/29/W2/S25/AP1	S25 – Appendix 1
OBJ/29/W2/S23/AP2	S25 – Appendix 2
Annette Robinson	
OBJ/29/W3/S01	S01 – Proof of Evidence
OBJ/29/W3/S02	S02 – Proof of Evidence
Glyn French	
OBJ/29/W4/S27/S31	S27/S31 – Proof of Evidence
Andrew Haunton	
OBJ/29/W5	Proof of Evidence
OBJ/29/W5/AP1	Appendix 1
OBJ/29/W5/AP2	Appendix 2
OBJ/29/W5/AP3	Appendix 3
OBJ/29/W5/AP4	Appendix 4
Andrew Murray-Wood	
OBJ/29/W6	Proof of Evidence
OBJ/29/W6/AP1	Appendix 1
Abdul Razaq	
OBJ/29/W7	Written representation
OBJ/32 – National Farmers Union	
Louise Staples	
OBJ/32/1	Summary
OBJ/32/2	Proof of Evidence
OBJ/34 – Gordon Crosby	
OBJ/34/1	Proof of Evidence
OBJ/34/2	Appendix 1
OBJ/34/3	Appendix 2
OBJ/34/4	Appendix 3
OBJ/34/5	Appendix 4
OBJ/34/6	Appendix 5

OBJ/34/7	Appendix 6
OBJ/36 – The Ramblers’ Association	
Robert Boardman	
OBJ/36/W1/1	Proof of Evidence S69 – Bacton
OBJ/36/W2/1	Proof of Evidence S31 – Mutton Hall
Derek Fisher	
OBJ/36/W3/1	Proof of Evidence S27 – Barrell’s
OBJ/36/W4/1	Proof of Evidence S28 – Grove Farm
Jenny Bradin	
OBJ/36/W5/1	Proof of Evidence S25 - Cattishall
OBJ/36/W5/2/1	Appendix 1 S25 – Cattishall
OBJ/36/W5/2/2	Appendix 2 S25 – Cattishall
Geoff Knight	
OBJ/36/W6/1	Proof of Evidence S01 – Brantham Sea Wall
OBJ/36/W7/1	Proof of Evidence S02 – Brantham High Bridge
Philip Prigg	
OBJ/36/W8/1	Proof of Evidence S22 - Weatherby
Derek de Moor	
OBJ/36/W9/1	Proof of Evidence
OBJ/36/W9/2-1	Appendix 1
OBJ/36/W9/2-2	Appendix 2
OBJ/36/W9/2-3	Appendix 3
OBJ/36/W9/2-4	Appendix 4
OBJ/36/W9/2-5	Appendix 5
OBJ/36/W9/2-6	Appendix 6
John Russell	
OBJ/36/W10/1	Proof of Evidence
OBJ/36/W10/2	Appendices
OBJ/36/W10/3	Summary
OBJ/42 – Mrs M J Johnston & Mr Alistair Fish	
Charles Lloyd	
OBJ/42/W1/1	Proof of Evidence
OBJ/42/W1/2	Appendices
OBJ/42/W1/3	Summary
OBJ/48 – Mr & Mrs Brace	
OBJ/48-1	Proof of Evidence
OBJ/48-2	Appendices
OBJ/53 – Taylor Wimpey UK Limited	
OBJ/53	Proof of Evidence
OBJ/53-1	Appendix 1
OBJ/53-2	Appendix 2
OBJ/53-3	Appendix 3

OBJ/53-4	Appendix 4
OBJ/53-5	Appendix 5
OBJ/53-6	Appendix 6
OBJ/60 – David Caldwell	
Sarah Caldwell	
OBJ/60-1	Proof of Evidence
OBJ/60-2	Appendices
OBJ/84 – Rachel Wood (Dr)	
OBJ/84-1	Proof of Evidence
OBJ/84-2	Appendices
Other Parties' Rebuttal Proofs	
OBJ/27 – Forest Heath District Council	
OBJ/27/W1	Sara Noonan
OBJ/29 – Suffolk County Council	
OBJ/29/W1	Stephen Kerr
OBJ/29/W2	Andrew Woodin
OBJ/29/W3	Annette Robinson
OBJ/29/W4	Glyn French

APPENDIX 6 – INQUIRY DOCUMENTS

NETWORK RAIL INQUIRY DOCUMENTS	
NR/INQ/1	Compliance Bundle
NR/INQ/2	Opening Statement
NR/INQ/3a	Filled Order
NR/INQ/3b	Replacement Order plans
NR/INQ/4	Reference Documents to Mr Brunnen's Evidence 1.0 Reference table- documents referred to in Proof of Evidence 4.5-4.8 National Operating Licence 4.7 The Railways Act 1993 5.1 NSP National Networks 5.5 EU Directive (Directive 2004-49-EC) 5.7 RSP7-Level Crossings-A guide for managers, designers and operators (2011) 5.9 Period Review 2013 - Final Determination of Network Rail Outputs and Funding for 2014-19 (PR13) 5.14 Safety-Vision-Statement 5.15 Managing Public Money [Extract] 5.18 R_L2_OPS_100 - Provision, risk assessment and review of level crossings 8.21 Ian Prosser Letter 9.22 015-06-report-T984-causes-of-pedestrian-accidents-at-level-crossings 9.26 HSE Contract Report 98-1996

NR/INQ/5	Correspondence between Network Rail and SCC about extending the scope of the SCC's Statement of Case
NR/INQ/6	Correspondence between Network Rail and Mr Bettley-Cooke (OBJ/01)
NR/INQ/7	Mr Brunnen notes relating to his Evidence in Chief
NR/INQ/8	Correspondence between Network Rail and SCC regarding draft side agreement
NR/INQ/9	Withdrawal of Objections from Mr Butler (OBJ-30) and Mrs Butler (OBJ/31)
NR/INQ/10	Withdrawal of Objection to Crossing S01 from Gillian Forsyth (OBJ/54)
NR/INQ/11	Withdrawal of Objection from Dr Box (OBJ/46)
NR/INQ/12	Reference Documents to Dr Algaard's Evidence 1.0 Reference table - documents referred to in Proof of Evidence 2.6.12 National Planning Policy Framework (NPPF) 2.6.12 Suffolk Transport Plan 2011-2031 2.6.17 Rights of Way Improvement Plan (ROWIP) 2.6.18 Safety at Level Crossings - House of Commons Transport Select Committee
NR/INQ/13	Note on definition of 'required' under s5(6)
NR/INQ/14	Bundle of correspondence between Sue Rumfitt Associates and WS Law regarding the Ramblers dated December 2017 to February 2018
NR/INQ/15	Reference Documents to Ms Tilbrook's Evidence - Part 1 (A - M)
NR/INQ/16	Reference Documents to Ms Tilbrook's Evidence - Part 2 (N - S)
NR/INQ/17	Reference Documents to Mr Billingsley's Evidence 1.0 Reference table of documents referred to in Proof of Evidence 3.4 MHCLG Guidance on the Compulsory Purchase Process & the Crichel Down Rules 4.8.6.1 Section 28 of the Highways Act 1980 6.1 Article 1 of the First Protocol of the European Convention on Human Rights 8.0 Objection Letters
NR/INQ/18	Note on Land Referencing Audit
NR/INQ/19	Office of Rail and Road and the Network Rail (Suffolk Level Crossing Reduction) Order
NR/INQ/20	Network Rail Project Processes (inc Appendix 1)
NR/INQ/21	Estimated cost savings referred to in Dr Algaard's Proof
NR/INQ/22	Appendices L-M of Ms Tilbrook's Evidence in colour - DIA
NR/INQ/23	Network Rail response to CCC email of 9 February 2018
NR/INQ/24	Response to WS Law from Mr Bettley-Cook dated 12 February 2018
NR/INQ/25	Control Period 6 Funding, Appendix 1 & Appendix 2
NR/INQ/26	Note on definition of 'Suitable and convenient'
NR/INQ/27	Photographic Record of PI Notices - January 2018
NR/INQ/28	Reference Note of Mr Prest
NR/INQ/29	Appendix T of Ms Tilbrook's Evidence
NR/INQ/30	Statement of Common Ground between Network Rail & Suffolk County Council
NR/INQ/31	Responses to Dr Wood (OBJ/84) questions to Dr Algaard
NR/INQ/32	Extracts from Volumes 0 and 7 of the Design Manual for Roads and Bridges
NR/INQ/33	Extract from Volume 6 of the Design Manual for Roads and Bridges
NR/INQ/34	Note: Individual & Collective risk and the calculated Fatalities and Weighted Injuries (FWI)
NR/INQ/35	Letter from the Environment Agency of 9 February 2018 and Network Rail note in response of 20 February 2018
NR/INQ/36	Position note on objection of the Royal Mail Group Limited (OBJ/52)
NR/INQ/37	EIA Screening Request dated 18 January 2017 and Appendices

NR/INQ/38	Diversity Impact Assessment – Scoping Report dated August 2016
NR/INQ/39	Article entitled "Plans unveiled for new depot near Manningtree", referred to in Mr Kenning's evidence
NR/INQ/40	S01 – Ecology Survey Drawing and Environmental Constraints plan
NR/INQ/41	Note: Cow Creek level crossing & impact of diverting users from S12 & S13 (with appendix)
NR/INQ/42	Identification of High Risk Level Crossing & the Frequency of Risk Assessments
NR/INQ/43	Note: Cost Benefit Analysis
NR/INQ/44	Note: Amendment made to the RSA Response Report 367516/RPT015 Rev B, included in core document NR16 (with 3 attachments)
NR/INQ/45	Supplementary note: Section 5(6) definition of 'required'
NR/INQ/46	Fatalities & Serious Incidents at Level Crossings 2005 – 2017
NR/INQ/47	Tab 6 Appraisal of Summary Table Template
NR/INQ/48	Webpage screenshot – Stour & Orwell Walk, Long Distance Path
NR/INQ/49	S01 - Colour plan entitled Environmental Constraints
NR/INQ/50	Note on walking speeds
NR/INQ/51	Responses to questions to Mark Brunnen by OBJ/84, Dr Rachael Wood
NR/INQ/52	Note entitled "Impact on future enhancements"
NR/INQ/53	Note on LIDAR (Light Detection and Ranging)
NR/INQ/54	Note on consultation with Local Planning Authorities with 2 Appendices
NR/INQ/55	Note entitled "The request for deemed planning permission"
NR/INQ/56	The Ramblers' Association, SoS for Environment, Food & Rural Affairs, Nottinghamshire County Council, Network Rail Infrastructure Limited and Severn Trent Water [2017] EWHC 716 (Admin)
NR/INQ/57	Notice posting note with two photographs
NR/INQ/58	Response to questions by OBJ/26, Paul Baker
NR/INQ/59	Statement on Crossing S22 NR/INQ/59a - Note of Crossing S22 NR/INQ/59b - Appendix 1: Newmarket & Chesterford Railway Act 1846 NR/INQ/59c - Appendix 2: Deposited Plans for Newmarket & Chesterford Railway Act 1846 NR/INQ/59d - Appendix 3: Book of Reference for Newmarket & Chesterford Railway Act 1846 NR/INQ/59e - Appendix 4: Conveyance from Duke of Rutland NR/INQ/59f - Appendix 5: Railways Clauses Consolidation Act 1845 (extract) NR/INQ/59g - Appendix 6: Deposited Plan for Great Eastern Railway Act 1879 (extract) NR/INQ/59h - Appendix 7: 1968 Council consultation correspondence NR/INQ/59i - Appendix 8: Conveyance of land south west of crossing NR/INQ/59j - Appendix 9: Conveyance of land south east of crossing NR/INQ/59k - Appendix 10: Demarcation Agreement NR/INQ/59l - Appendix 11: No Public Right of Way confirmed by Suffolk County Council NR/INQ/59m - Appendix 12: Ramblers' Association v SoS for Environment Food & Rural Affairs, Network Rail and Others NR/INQ/59n - Appendix 13: British Transport Commission Act 1949 NR/INQ/59o - Appendix 14: Section 31 Highways Act 1980
NR/INQ/60	Note in response to the statement on 13 February 2018 by Matt Hancock MP (OP/INQ/10)
NR/INQ/61	Operational Impacts of level crossings
NR/INQ/62	Note on House of Commons Transport Committee report on Safety at Level Crossings
NR/INQ/63	Case Law bundle comprising 26 extracts

NR/INQ/64	Note on Road Safety Audit S08
NR/INQ/65	Speaking Note on S22 Weatherby
NR/INQ/66	Note on the Statement of Matters
NR/INQ/67	Note on removal of plots
NR/INQ/68	Note on document submitted by Mr Crosby (OBJ/34) in relation to footway works
NR/INQ/69	Response to Mr Crosby's submission on S01 Sea Wall
NR/INQ/70	E-mail exchange with West Suffolk District Council and the Department for Transport on Screening Request consultation
NR/INQ/71	Mr Prest evidence note on additional information on S22 Weatherby
NR/INQ/72	Network Rail Note – Network Rail does not object to Mr Hodson's late submission dated 28 March 2018
NR/INQ/73	Network Rail email response to Mr Edwards' submission dated 28 March 2018
NR/INQ/74	Note on 85th Percentile Speed
NR/INQ/75	Note on Newmarket Town Attendance
NR/INQ/76 NR/INQ/76/1	Response to Mr Baker's proposed modifications re S69, S13 Appendix
NR/INQ/77	Note on S13 and response to Mr Finbow
NR/INQ/78	Supplementary note on S22
NR/INQ/79	Note on approvals process and attachment
NR/INQ/80	Note on DIAs and attachment
NR/INQ/81	Note on Ecology
NR/INQ/82	Ecology technical note and five attachments: a. Appendix A b. Appendix B c. Ecological Constraints Report d. Suffolk Precautionary Method Statement e. HRA Screening Report
NR/INQ/83	Ecology Technical Note S01, S02, S03
NR/INQ/84	Response to SCC's proposed modifications to the Order and letter dated 6 April
NR/INQ/85	Bacton United confirmation of withdrawal of objection
NR/INQ/86	Network Rail - Filled Order and Note dated 06.04.18
NR/INQ/87	Network Rail Note on Drainage at S69 Pound Hill Underbridge
NR/INQ/88	Email correspondence between Mr P Hodson and the Programme Officer/Inspector regarding submitting further evidence and cross-examination
NR/INQ/89	Network Rail Note on S24 - Full ATC counts
NR/INQ/90	Network Rail Note in response to the drainage maps submitted by Mr P Baker on 19 April 2018
NR/INQ/91	Extract from Joint Development Management Policies Document, February 2015
NR/INQ/92	Taylor Wimpey Land at Bury St Edmunds - Master Plan
NR/INQ/93	Page 34 of Andy Kenning's Proof of Evidence with hand-written annotations
NR/INQ/94	Two plans - Distribution Area 5A (Round 2 numbering)
NR/INQ/95	Network Rail Note in response to Mr & Mrs Brace 1 May 2018 plus plan
NR/INQ/96	Network Rail Note on ATC Survey Number - AC06 for S27 Barrell's Road
NR/INQ/97	Note in response to Mr Smy regarding flooding
NR/INQ/98	Note on Cycle Speeds and National Cycle Routes
NR/INQ/99	Note on vehicle restraint systems and bridge parapet heights
NR/INQ/100	Letter from Gateley Plc withdrawing Objection on behalf of Taylor Wimpey
NR/INQ/101	Network Rail Order modification request in relation to crossing S29 Hawk End Lane

NR/INQ/102	Environmental Appraisal & Action Plan Technical Note
NR/INQ/103	Note on S27 Hump Back Bridge Stopping Sight Distance
NR/INQ/104	Construction of new bridges - Network Rail's approach to shared value
NR/INQ/105	Network Rail Note on recent planning permission in Thurston
NR/INQ/106	Note on S25 diversion distance
NR/INQ/107	Note on crossings S27 and S28
NR/INQ/108	Natural England position update on S01 Sea Wall Level Crossing
NR/INQ/109	Note of response to Mr Hodson's various submissions
NR/INQ/110	Network Rail response to Mr Crosby's email of 16.05.18
NR/INQ/111	Further response to Mr Crosby submitted 22.05.18
NR/INQ/112	S01 Assessment Technical Note
NR/INQ/113	Note regarding Order Plans and revised Plans (inc.: Note regarding Order plans dated 21 May 2018; Mott Macdonald Technical Note 367516/TN35 Rev A; example letters; statement from Bacton United FC; Note on filled up Order dated 21 May 2018; and, revised plans, dated 21 May 2018).
NR/INQ/114	Network Rail Note on the Code of Good Shooting Practice
NR/INQ/115	Network Rail Draft Conditions
NR/INQ/116	Response to questions asked of Mr Prest in respect of S27 and S69
NR/INQ/117	Note on Mott MacDonald Staff in Attendance at the Ecology Session in the Inquiry on 23 May 2018
NR/INQ/118	Filled up Order without Schedules-23 May 2018
NR/INQ/119	Filled up Order with Schedules-23 May 2018
NR/INQ/120	Network Rail letter to Mr & Mrs Smith (OBJ/121) dated 20 April 2018
NR/INQ/121	Note on S03 Mapping Discrepancies
NR/INQ/122	Joint Statement on behalf of Network Rail and SCC-24 May 2018
NR/INQ/123	Note on implications of objector alternatives for the Order
NR/INQ/124	Revised Note on implications of objector alternatives for the Order
NR/INQ/125	Letter to Mr & Mrs Bagshaw dated 24 May 2018
NR/INQ/126	Letter to Mr & Mrs Crack dated 24 May 2018
NR/INQ/127	Letter to Mrs C Milward dated 24 May 2018
NR/INQ/128	Final filled up Order and note regarding removal of S07-24 May 2018
NR/INQ/129	Note on Inspector's concerns on draft Order as drafted and side agreement
NR/INQ/130	The Anglia Rail: Reduction Strategy HRA Stage 1 Screening S01 Sea Wall
NR/INQ/131	Note on Implications of Objector Alternatives for the Order dated 24 May 2018 and Schedules
NR/INQ/132	Network Rail response to Birketts on Application of Costs on behalf of Mr David Caldwell
NR/INQ/133	Network Rail response to Mr Paul Baker on Application of Costs
NR/INQ/134	Joint Statement on behalf of Network Rail and SCC signed and dated 24 May 2018
NR/INQ/135	Court Judgement People over Wind and Peter Sweetman V Coillte Teoranta
NR/INQ/136	Note on modifications to the Order discussed on day 25 of Inquiry
NR/INQ/137	Closing submissions on behalf of Network Rail
NR/INQ/138	Town and Country Planning Act 1990, Part X Highways, section 247 and 257.
NR/INQ/139	Mott Macdonald-Anglia Level Crossing Reduction Strategy-Suffolk, Precautionary Method of Works: Legally Protected Species, 25 May 2018-tracked change version.
NR/INQ/140	Rule 10(6) Request for Planning Permission-tracked change version
NR/INQ/141	The Network Rail (Ordsall Chord) Order 2015
NR/INQ/142	Network Rail's response to Cost Application made by Birketts LLP on behalf of Mairi Johnston and Alistair Fish
NR/INQ/143	Mott Macdonald-Anglia Level Crossing Reduction Strategy-Suffolk,

	Precautionary Method of Works: Legally Protected Species, 25 May 2018-clean version of NR/INQ/139
NR/INQ/144	Consultation response regarding the National Planning Policy Framework, July 2018.
OTHER PARTIES' INQUIRY DOCUMENTS	
OP/INQ/1	Opening Statement - Suffolk County Council (OBJ/29)
OP/INQ/2	Opening Statement - Forest Heath District Council (OBJ/27)
OP/INQ/3	Opening Statement - St Edmundsbury Borough Council (OBJ/28)
OP/INQ/4	Opening Statement - The Ramblers' Association (RA) (OBJ/36)
OP/INQ/5	Letter from Suffolk County Council dated 05.12.17 regarding Statement of Case
OP/INQ/6	Correspondence Bundle dated 8 to 12 February between the Ramblers' Association and Network Rail (NR) regarding Legal Submissions
OP/INQ/7	Dr Rachel Wood (OBJ/84): Written Questions to evidence given by Mr Brunnen and Dr Algaard
OP/INQ/8	Correspondence between Mr Smy (OBJ/16) and Network Rail dated 13 and 28 December 2017 (attaching a copy of 'Review of Network Rail's All Level Crossing Risk Model (ALCRM)')
OP/INQ/9	Suffolk County Council (OBJ/29): Network Rail letter to Suffolk County Council dated 27 July 2017 referred to in Mr Kerr's Proof of Evidence
OP/INQ/10	Statement of Mr Matt Hancock, MP for West Suffolk
OP/INQ/11	The Ramblers' Association (OBJ/36): Replacement Contents page of Mr Russell's Proof of Evidence
OP/INQ/12	Philip Hodson (OBJ/13): PowerPoint slides
OP/INQ/13	The Ramblers' Association (OBJ/36): case law/Hansard extract source documents referred to in the Opening Statement (OP/INQ/04) and Legal Submissions (OP/INQ/06) - (i) Supreme Court Judgement - R Lumba v Secretary of State for the Home Department, 2011 (ii) Hansard extract - volume 204 col 485 (iii) DEFRA Rights of Way Circular (1/09)
OP/INQ/14	The Ramblers' Association (OBJ/36): Appeal Court Judgement - Hertfordshire County Council v DEFRA, of 14 December 2006
OP/INQ/15	The Ramblers' Association (OBJ/36): Further source document referred to in the Opening Statement (OP/INQ/04) - Case law, Margery Hale v Norfolk County Council 2001; Court of Appeal Judgement - Burnside v Emerson, July 1968; and Highway Law, Stephen Sauvain QC (extract)
OP/INQ/16	The Ramblers' Association (OBJ/36): Mr Russell's reference documents - (i) ROSPA Rural Road Safety Factsheet, February 2017 (ii) Office of Rail & Road - Rail Safety Statistics, 22 September 2016 (iii) ROSPA Rural Road Environment Policy Paper (extract), August 2010 (iv) ROSPA Inappropriate Speed (extract), February 2017 (v) Department for Transport - Manual for Streets (extract - street dimensions)
OP/INQ/17	The Ramblers' Association (OBJ/36): s31 note
OP/INQ/18	Paul Baker (OBJ/26): Questions to Network Rail
OP/INQ/19	Suffolk County Council (OBJ/29): Extract of the Highways Act 1980 (section 293)
OP/INQ/20	Suffolk County Council (OBJ/29): Rights of Way status of S22 Weatherby
OP/INQ/21	Suffolk County Council (OBJ/29): Screen shot Mrs Robinson's proof
OP/INQ/22	National Farmers Union (OBJ/32): Speaking notes of Louise Staples
OP/INQ/23	The Ramblers' Association (OBJ/36): Note: Applicability of the Highways Act tests with reference to NR/INQ/26
OP/INQ/24	Suffolk County Council (OBJ/29): Note on the application of section 5(6)

	of the Transport and Works Act 1992 and the meaning of "required"
OP/INQ/25	Gordon Crosby (OBJ/34): Note and letter from James Cartlidge MP to Brantham Parish Council of 7 February 2018 concerning train depot development
OP/INQ/26	Brantham Parish Council (OBJ/83): Two photographs in relation to the route of the Stour and Orwell Walk
OP/INQ/27	Gordon Crosby (OBJ/34): Extract from the Town & Country Planning Act 1990 (as amended) and Town & Country Planning (Development Management Procedure) Order 2015
OP/INQ/28	The Ramblers' Association (OBJ/36) - Extracts of Oxford English Dictionary of 'suitable' and 'convenient'
OP/INQ/29	Gordon Crosby (OBJ/34): Supplementary Appendix to Proof of Evidence, 2 March 2018
OP/INQ/30	Suffolk County Council (OBJ/29): Exchange of correspondence between Suffolk Highways of 9 February 2018 and response on behalf of Network Rail of 12 February 2018
OP/INQ/31	Ramblers' Association (OBJ/36): Note on the status of S22 Weatherby
OP/INQ/32	Schedule 15 of the Wildlife & Countryside Act 1981
OP/INQ/33	Suffolk County Council (OBJ/29): Supplementary Submissions on the Rights of Way status of S22 Weatherby
OP/INQ/34	Paul Baker (OBJ/26): Conditional withdrawal of objection to crossing S12 Gooderhams
OP/INQ/35	Dr Rachel Wood (OBJ/84): Supporting evidence to show accuracy of quoted sources for Appendices
OP/INQ/36	Dr Rachel Wood (OBJ/84): Proceedings of the Cambridge Antiquarian Society (extracts)
OP/INQ/37	Suffolk County Council (OBJ/29): Further correspondence between Cambridgeshire County Council and Network Rail in relation to crossing S22 and referred to in Appendix 2 to SCC Proof of Evidence of Andrew Woodin
OP/INQ/38	Dr Rachel Wood (OBJ/84): Newmarket – Enquiry by Design Workshop Report
OP/INQ/39	Forest Heath District Council (OBJ/27): Additional Appendices of Sara Noonan
OP/INQ/40	Paul Baker (OBJ-26): Additional Appendices 4 and 5, together with clarification emails relating to an alternative proposal
OP/INQ/41	Ramblers' Association (OBJ/36): Technical Note of Mr Russell – S69 Bacton
OP/INQ/42	Philip Hodson (OBJ/13): Press cuttings
OP/INQ/43	Ramblers' Association (OBJ/36): Note on S22 Weatherby Crossing on extent to which Ramblers agrees with the Network Rail's proposed approach and Extract of the Railways Clauses Consolidation Act 1845
OP/INQ/44	Suffolk County Council (OBJ/29): Note in response to NR/INQ/65 on S22 Weatherby
OP/INQ/45	C C Gooderham & Son (OBJ/40): Written Statement dated 12 February 2018
OP/INQ/46	C C Gooderham & Son (OBJ/40): Written Statement dated 13 March 2018
OP/INQ/47	Paul Baker (OBJ/26) - email dated 9 March 2018 - alternatives
OP/INQ/48	Mark Beaven (OBJ/91): Statement dated 13 February 2018
OP/INQ/49	Paul Baker (OBJ/26): Map extract highlighting Church Road footway
OP/INQ/50	Suffolk Local Access Forum (OBJ/23): Background note from David Barker
OP/INQ/51	Suffolk County Council (OBJ/29): Proposed traffic management priority arrangement relating to the development off Broad Road – 4 drawings
OP/INQ/52	Ramblers' Association (OBJ/36): Updated statement of Mr Boardman

OP/INQ/53	Philip Hodson (OBJ/13): Evidence to show Network Rail is capacitated to build infrastructure assets and bridges
OP/INQ/54	Forest Heath District Council (OBJ/27): Statement by Graham Edwards on behalf of the Newmarket Town Football Club
OP/INQ/55	Email trail with Graham Edwards, Newmarket Football Club with Article published in Newmarket Journal
OP/INQ/56	Email trail with Dawn Smith on behalf of John Smith regarding attendance at Inquiry
OP/INQ/57	Mr Baker - (OBJ/26) Proposed alternate solution for crossings S13 Fords Green and S69 Bacton dated 06.04.18
OP/INQ/58	SCC - Modifications to the Order plus table and two versions of Order
OP/INQ/59	SCC Note on flooding at the Pound Hill underbridge
OP/INQ/60	SCC & SEDC Note concerning Network Rail's request for Deemed Planning Permission
OP/INQ/61	SEDC - Note on Environmental Impact Assessment
OP/INQ/62	Email from John Finbow in support of Mr Baker's alternative proposal
OP/INQ/63	Email from Bacton '89 Football Club in support of Mr Baker's alternative proposal
OP/INQ/64	SCC - four plans regarding Bacton, Pound Hill Under Bridge
OP/INQ/65	Email and plans from Mr Baker - S69 surface water flood risk and responsibility
OP/INQ/66	Email from Judith Hull in support of Mr Baker's alternative proposal
OP/INQ/67	Email from Simon Gooderham in support of Mr Baker's alternative proposal
OP/INQ/68	SEBC - Local Plan Policies Map and Index
OP/INQ/69	SEBC - Letter regarding Proof of Evidence and submission of letter from Network Rail 25-06-2015
OP/INQ/70	Email trail with Guy Bettley-Cooke confirming likely attendance.
OP/INQ/71	Additional note from Philip Hodson in response to email regarding his proposed additional cross-examination.
OP/INQ/72	Ramblers - Technical Note by John Russell regarding traffic survey evidence
OP/INQ/73	Article published in Newmarket Journal on 15 March 2018
OP/INQ/74	Submission of Statement from Mrs P Collins
OP/INQ/75	Further submission from Mr M Smy regarding Proposed Diversionary Route
OP/INQ/76	Local Plan Policies cover sheet
OP/INQ/77	Papers submitted to the Inquiry by Newmarket Town Council on 02.05.18
OP/INQ/78	Correspondence from Mr Hodson regarding Yellow Brick Road
OP/INQ/79	Briefing Note on St Edmundsbury Local Plan
OP/INQ/80	SCC - photographs taken at Higham
OP/INQ/81	Mr Baker's response to Network Rail regarding drainage - 01.05.18
OP/INQ/82	SCC note on Draft Order E/3169 including draft s247 order, public notice and site plans 1 & 2
OP/INQ/83	Road Traffic Regulation 1984, Section 14
OP/INQ/84	Plan Walk Bing Map - Thurston CP
OP/INQ/85	Two OS maps regarding Crossing S23
OP/INQ/86	Written Submission from the Ramblers' Association on the wording of the Amended Draft Order and the Request for Planning Permission
OP/INQ/87	SCC - Further research into history of Pound Hill Bacton in response to Network Rail Note on drainage at Pound Hill
OP/INQ/88	Mr Smy - note regarding leaflet distribution area - Round 2 Distribution
OP/INQ/89	The Ramblers' Association Closing Submission presented by Ms Sue Rumfitt
OP/INQ/90	Appendices to the Ramblers' Association's Closing Submission

OP/INQ/91	SCC updated modifications
OP/INQ/92	FHDC and SEBC further information on S22 and S25
OP/INQ/93	Submission of 14.05.18 from Mr Crosby regarding widths of pedestrian routes
OP/INQ/94	Email of 18.05.18 confirming that FHDC and SEBC are happy with Network Rail suggestions re S22 and S25
OP/INQ/95	Objection-Mr & Mrs Crack
OP/INQ/96	SCC modification plan for S01 and S23
OP/INQ/97	FHDC and SEBC concerns regarding leaflet drop
OP/INQ/98	Potential late objection from Mrs C Milward
OP/INQ/99	Closing Submission by Mr N Farthing, Birketts on behalf of OBJ/42
OP/INQ/100	Costs Application received from Ms M Grice, Birketts on behalf of OBJ/60
OP/INQ/101	Objection correspondence from Mr & Mrs Bagshaw
OP/INQ/102	Closing Statement of Mr Paul Baker OBJ/026
OP/INQ/103	Closing Statement on behalf of Mr David Caldwell
OP/INQ/104	Closing Statement of Mr Gordon Crosby
OP/INQ/105	Closing Statement of Mr Warwick Hirst on behalf of Newmarket Town Council
OP/INQ/106	Note from Senior Ecology & Landscape Officer from SCC
OP/INQ/107	Costs Application from Mr Paul Baker
OP/INQ/108	Closing Statement from Mr Philip Hodson
OP/INQ/109	Closing Statement and Appendices on behalf of Suffolk County Council
OP/INQ/110	Closing Statement and Appendix on behalf of Forest Heath District Council
OP/INQ/111	Closing Statement on behalf of St Edmundsbury Borough Council
OP/INQ/112	SCC confirmation email as to current status of Rights of Way Improvement Plan 2006-2016
OP/INQ/113	Cost application on behalf of Mr David Caldwell-response to Network Rail comments of 24 May 2018
OP/INQ/114	Cost application on behalf of Messrs E Hudson Baker-response to Network Rail comments of 24 May 2018
OP/INQ/115	Regina v. Brent London Borough Council, ex parte Gunning and others, Queens Bench Division: 26 April 1985.
OP/INQ/116	Cost application made by Birketts LLP on behalf of Mairi Johnston and Alistair Fish
OP/INQ/117	Cost application made by Birketts LLP on behalf of Mairi Johnston and Alistair Fish (no comment on Network Rail's response of 30 May 2018.
OP/INQ/118	Consultation responses regarding the National Planning Policy Framework, July 2018 (the Ramblers, dated 11 September 2018, and the NFU, dated 14 September 2018).
NOTES ISSUED ON BEHALF OF THE INSPECTOR	
INSP/1	Notes following pre-Inquiry meeting, 6 November 2017.
INSP/2	Pre-Inquiry Note 2- Inquiry venues, 3 January 2018.
INSP/3	Inquiry Note 1-Whether this Inquiry is an appropriate forum to determine if public rights of way exist over Weatherby level crossing (S22), 27 April 2018.
INSP/4	Revised National Planning Policy Framework (notification and opportunity to comment), 11 September 2018.

APPENDIX 7 – ABBREVIATIONS

ALCRM	Network Rail's All Level Crossing Risk Model
Application Rules	Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
AQMA	Air Quality Management Area
ATC	Automatic traffic count
BOAT	Byway open to all traffic
BPC	Brantham Parish Council
cba	Cost benefit analysis
CCC	Cambridgeshire County Council
CCC HWS	Cambridgeshire Health and Wellbeing Strategy 2016-17
CCC ROWIP	Cambridgeshire County Council Rights of Way Improvement Plan
CLTP3	Cambridgeshire's Local Transport Plan 3
CP5	Control Period 5
CRD	Client Requirements Document-Anglia CP5 Level Crossing Reduction Strategy
CROW Act	Countryside and Rights of Way Act 2000
CS	St Edmundsbury Core Strategy
DC	D Caldwell
DCO	Development Consent Order
DfT	Department for Transport
DIA	Diversity Impact Assessment
EA	Environment Agency
EIA	Environmental Impact Assessment
EPR	Environmental Permitting (England and Wales) Regulations 2016
EWR	East-West Rail project
FHDC	Forest Heath District Council
the Framework	The National Planning Policy Framework, 2019
FWI	Fatalities and Weighted Injuries score
GBPC	Great Barton Parish Council
GC	G Crosby
GP	ROWIP Guiding Principle
GRIP	Network Rail's Governance of Railway Investment Projects
HA 1980	The Highways Act, 1980
HGV	Heavy goods vehicle
JF	M Johnston & A Fish
LP	Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document, 2015
LTP	Local Transport Plan
MB	Messrs EH Baker, MA Baker & PE Baker
MfS	Manual for Streets
MG	Ms Golden
MHUE	Moreton Hall Urban Extension
MMB	Mr & Mrs Brace
MS	M Smy
NEUE	North East Bury St Edmunds Urban Extension
NFU	The National Farmers' Union
NLODG	Newmarket Ladies Open Door Group
NPSNN	National Policy Statement for National Networks
NR	Network Rail Infrastructure Limited
NTC	Newmarket Town Council
the Order	Network Rail (Suffolk Level Crossing Reduction) Order 201[X]
OM	Order modification

ORR	Office of Rail and Road
ORR LCS	Office of Rail and Road's 'Strategy for regulation of health and safety risks-4: Level crossings'
PC	P Collins
PCPA 2004	Planning and Compulsory Purchase Act 2004
PH	P Hodson
POE	Proof of evidence
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
Ramblers or RA	The Ramblers' Association
RIX	Re-examination
RMG	Royal Mail Group Limited
ROWIP	Rights of Way Improvement Plan
RRD	Route Requirements Document
RSA	Road Safety Audit
RS(R)	Ramblers' evidence on road safety (OBJ/36/W10/1)
RSSB	Rail Safety and Standards Board
RW	R Wood
SCC	Suffolk County Council
the scheme	Network Rail (Suffolk Level Crossing Reduction) Order Scheme
SEBC	St Edmundsbury Borough Council
Secretary of State	Secretary of State for Transport
SFN	Strategic Freight Network
SLAF	Suffolk Local Access Forum
SLTP	Suffolk Local Transport Plan 2011-2031
SMIS	Safety Management Intelligence System
SOA	ROWIP Statements of Action
SoM	Secretary of State issued Statement of Matters
SRM	Safety Risk Model
SRP	Suffolk Rail Prospectus
the Strategy	The Anglia CP5 Level Crossing Risk Reduction Strategy
TSR	Temporary speed restriction
TWA	Transport and Works Act, 1992
TWAO	Transport and Works Act Order
XIC, EIC	Examination in Chief
XXC, XX	Cross-examination

APPENDIX 8-PLANNING CONDITIONS

Interpretation

In the following conditions:

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

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

'Network Rail' means Network Rail Infrastructure Limited;

'the Order' means the Network Rail (Suffolk Level Crossing Reduction) Order 2011[];

Time limit for commencement of development

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

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

Detailed design approval

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

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

Landscaping scheme

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

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

Reason: in the interests of visual amenity.

Landscaping implementation and maintenance

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

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

Ecology

- 6) No development shall take place at each location except in accordance with the details for that location set out in the *Precautionary Method of Works: Legally Protected Species, 25 May 2018*¹⁰⁵⁶, or any subsequent revisions that have been submitted to and approved in writing by the local planning authority.

Reason: to protect the ecological value of the area.

Working hours

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

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

¹⁰⁵⁶ NR/INQ/143.