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Date: 15 January 2024

Network Rail Consultation Response

Reference: S62A/2023/0026
Location: Land South Of (West Of Robin Hood Road) Rush Lane Elsenham
Recommendation: Holding Objection – Further information/discussion is required with Applicant regarding mitigation measures required in connection to Network Rail's Fullers End public footpath level crossing

Dear Mark,

Thank you for consulting Network Rail (NR) regarding the above planning application.

The application site is located in close proximity to NR's Fullers End (public footpath) level crossing. NR is concerned that the proposed development would lead to adverse safety impacts at the level crossing. Therefore, to make the proposed development acceptable, NR requests appropriate mitigation measures be implemented to address the impact of the development on Fullers End level crossing. NR is keen to meet and work with the Applicant to progress this matter.

Further information is set out within this consultation response.

Network Rail's previous consultation responses and TWAO update

NR submitted consultation representations in relation to a previous planning application on this site (UTT/19/0437/OP – APP/C1570/W/19/3242550). Initial consultation responses raised concerns about the impact of the proposed development on Fullers End level crossing. During the course of the application, further discussion with the Applicant took place.

In a consultation response submitted on 02/07/2019, NR advised that it would be seeking to close the crossing through the submission of a Transport and Works Acts Order (TWAO) (Essex and Others Level Crossing Reduction Order 2022). NR's proposal was to close the crossing and divert the public right of way along an underbridge beneath the railway line.

NR received confirmation from the Secretary of State on 16/03/2022 that the proposal for Fullers End level crossing would not be included in the approved TWAO. As a result, NR does not currently have consent to close the crossing and divert the public right of way.

Impact of the proposed Development on Fullers End public footpath level crossing

NR is the statutory undertaker for maintaining and operating railway infrastructure of Great Britain. As a statutory undertaker, NR is under license from the Department for Transport (DfT) and Transport Scotland (TS) and regulated by the Office of Rail and Road (ORR) to maintain and enhance the operational railway and its assets, ensuring the provision of a safe and efficient operational railway.¹

NR operates in a complex statutory and regulatory environment. The Health and Safety at Work etc. Act 1974 places duties on NR to conduct its undertaking to ensure, so far as is reasonably practicable, that it does not expose level crossing users to an unacceptable level of risk. Its fundamental obligations related to the running of the railway are contained in its Operating Licence.

The Licence provides, inter alia, that NR's primary obligation is to run a 'safe and efficient' railway network in Great Britain. The overarching duty to ensure safety is met, principally, by the elimination or mitigation of risks.

Level crossings are one of the main sources of catastrophic risk and the most appropriate method of dealing with such risk is by physical removal of level crossings from the network, where appropriate. This is entirely in line with the Health and Safety Executive's hierarchy of risk controls.

Fullers End level crossing's current ALCRM (All Level Crossing Risk Model) risk score means it is ranked the 13th highest within the Anglia Route among other similar crossings (i.e. footpaths and bridleways with miniature stop lights, of which there are 53). The daily usage, based on a camera census from May 2019, is 5 cyclists and 76 pedestrians. Vulnerable users including unaccompanied children, a mounted cyclist, and a motorbike, were observed during the census period.

It is not possible to enhance the protection at this level crossing because miniature stop lights are already the best available form of protection. The only way to remove the likely issues is to close the level crossing.

The proposed development will result in 40 new households being built close to the crossing. These will inevitably drive usage of the crossing as people walk to access the countryside or walk into the town on the eastern side of the railway. This has not been quantified but there is the potential the level of usage could result in the ALCRM risk category worsening. Additionally, the presence of the crossing will be likely to attract children looking for places

¹ <https://www.networkrail.co.uk/wp-content/uploads/2016/11/Network-licence-and-conditions-.pdf>

of interest to play and congregate. This will add to the existing vulnerable users of the crossing and will have an impact on the qualitative, if not the quantitative, risk.

The proposal to create the development's vehicular access on Robin Hood Road will place the level crossing front and centre at the site's main entrance, whereas previously approved outline proposal (UTT/19/0437/OP – APP/C1570/W/19/3242550) would have provided access on Rush Lane, more remote from the crossing, doubtless encouraging some people to head away from the crossing rather than towards it.

Recommended mitigation

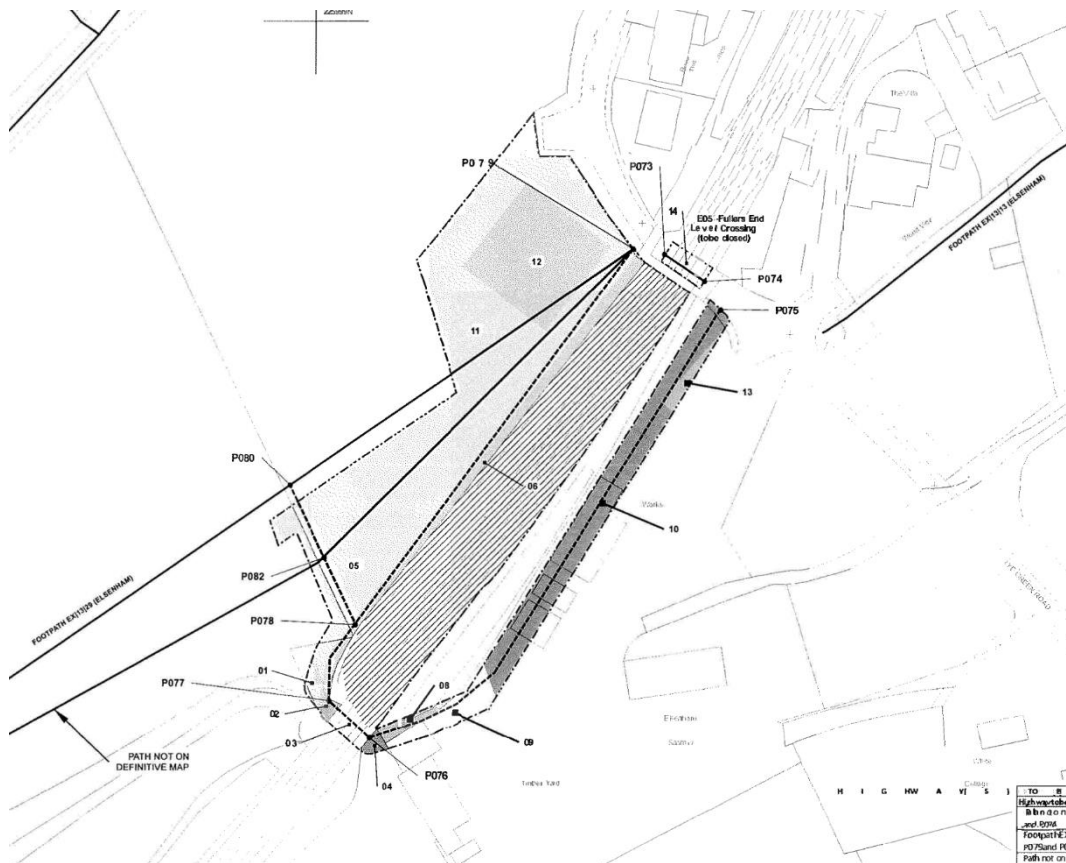
NR has been attempting to close this crossing for several years, the need for doing so increasing each time developments result in more people moving to the vicinity of the crossing. Fortunately, there is an underbridge beneath the railway 108m to the south which, if appropriately connected into, will provide a suitable, convenient, attractive, and safe way for people to cross the railway, removing all risk of a fatality at the level crossing.

NR ask that the Applicant works with NR and the landowner(s) east of the railway to create this diversion by way of a Rail Crossing Diversion Order. There is already a footpath across the Applicant's land which would form the basis of the diversionary route west of the railway.

In terms of the requirements for type of path, these can be discussed at greater length with the highway authority and local consultees, but providing a walking route in keeping with the environment on Robin Hood Road and Tye Green Road (bonded surface, illuminated, 2m wide) would seem to be appropriate in order to maintain accessibility for all existing users.

Figure 1 below shows the Order Limits Plan prepared for NR's Essex and Others Level Crossing Reduction Order 2022. As stated earlier in this consultation response, the proposal for Fullers End level crossing was not approved as part of the TWAO. The proposal at that time was to create a new public footpath between points P075, P076, P077, P078, and P079, together with a path between P078, P082 and P080 to connect in with the existing public footpath. A version of this proposal, amended as appropriate on the western side of the railway to compliment the Applicant's proposals, is NR's suggested way forward.

Figure 1: TWAO 'Order Limits Plan'



Network Rail Asset Protection

The application site is located directly adjacent to NR's land and operational railway infrastructure. As a result, the Applicant will be required to engage with NR's Asset Protection and Optimisation (ASPRO) team through an Asset Protection Agreement. This will allow NR's ASPRO team to review the details of the proposal to ensure that the works can be completed without any risk to the operational railway.

To start the process with our Asset Protection team, the Applicant should use the Asset Protection Customer Experience (ACE) system found on NR's Asset Protection website (<https://www.networkrail.co.uk/running-the-railway/looking-after-the-railway/asset-protection-and-optimisation/>). This website also provides more information about the NR Asset Protection team and the services they offer.

I trust that the above clearly sets out NR's position on planning application S62A/2023/0026, should you require any further information please do not hesitate to contact me.

Yours sincerely

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