

Our ref: F185291  
Appeal ref: S62A/2023/0026

Mark Boulton  
Operations Manager  
**The Planning Inspectorate**  
3<sup>rd</sup> Floor  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

24<sup>th</sup> January 2024

**SENT VIA EMAIL**

Dear Mr Boulton,

**RE: S62A/2023/0026 - Land West of Robin Hood Road, Elsenham**

I am the agent for the above application, and I write on behalf of the applicants, Rosconn, Nigel John Burfield Holmes, Rosemary Holmes, Mark Burfield Holmes, Robert Murton Holmes, Sasha Renwick Holmes, and Tanya Renwick Cran. I write to respond to the holding objection letter received from Network Rail dated 15<sup>th</sup> January 2024.

Network Rail Consultation Response

The matter of the Fullers End Public Footpath Level Crossing (route E05) has previously been raised by Network Rail and was assessed in the determination of extant planning permission reference UTT/19/0437/OP (approved at Appeal ref: APP/C1570/W/19/3242550).

The existing crossing at Fullers End, E05, is an active level crossing with Miniature Stop Lights and an audible warning of the approach of trains. Network Rail's desire to close the level crossing and provide an alternative route was pursued independently through the submission of a Transport and Works Acts Order (TWAO) (Essex and Others Level Crossing Reduction Order 2022). It is important to highlight that the grant of planning permission in 2020 was not subject to this submission, nor its outcome. We are therefore concerned that the Network Rail case made in the TWAO, in support of the closure of E05, and which has already been dismissed by the Secretary of State, is now being replayed within this holding objection, and that this application is not the correct forum for a re-examination of Network Rail's proposals.

The issue for planning is whether the proposed development would result in a level of intensification at the level crossing that would result in worsening the risk associated with its usage. We strongly contend that this is not the case and that this matter was looked at in the determination of the extant permission and that the intensification was not considered to be harmful such that the crossing must be closed, or that contributions were necessary to upgrade the crossing. The existence

of an extant permission is a significant material consideration in the determination of this application.

The diverted route can be delivered and is safeguarded in the illustrative design and layout of the proposed scheme, as well as within the current Reserved Matters application, pending consideration by the Local Planning Authority. Our clients, the Holmes family, objected to the proposed diversion on the basis that the alternative route was considered to result in safety and security concerns, providing opportunities for anti-social behaviour, vandalism and bringing the route close to their home, where there is limited natural surveillance. Their concern about the remoteness of the link was shared by other objectors.

Bearing in mind the case for and against the closure, it should be noted that the Inspector in their Report to the Secretary of State for Transport (copy attached in Appendix A), recommended that the proposals to close and divert the Fullers End Level Crossing route, were not included in the order as the proposed alternative does not provide existing users of the crossing with a suitable and convenient alternative route. The comments raised specific concerns regarding the gradient and surfacing of the route; its use by those who are mobility impaired; and its use for wheelchairs, mobility scooters and pushchairs. It also highlighted that the dog-leg would add 250m to the journey distance, presenting a significant inconvenience to those using the route for utilitarian purposes, and may result in discouraging such users.

With regards to the increased level of use related to new residential development within the area, it should also be highlighted that in their case to the Inspector, Network Rail highlighted that the Uttlesford Local Plan (at that time) contained several large housing allocations in Elsenham, some of which had the potential to increase risk at this level crossing, and one of which was this site. One must assume therefore that in their decision to remove E05 from the order, the potential impact of new housing and the resultant level of additional users was balanced against the problems identified with the alternative route. It is therefore unclear what has changed since that recommendation, and what would lead the Inspector to an alternative decision.

In terms of intensification of use, we would highlight that due to the location of the key services and facilities within the village being north of the site and accessed via Robin Hood Road, the only users from the development site likely to head south to Fullers End would be those using the footpath for recreational reasons. Occupiers within the proposed development would have no other reason to travel south over the crossing. The revised location of the access to the site will not alter this behaviour, and we highlight that the extant permission retained the route of the Public Right of Way, and as such the pedestrian connections to the level crossing remain within the extant approval. We would therefore contend that the intensification is likely to be negligible, leisure-related, and that the relocation of the proposed vehicular access does not alter the pedestrian connectivity that exists both now and within the extant approval.

Finally, in terms of safety concerns over the illustrated location of the play area and its proximity to the level crossing, we are mindful that the location to the eastern end of the site is a concern that has been identified by some objectors and a matter raised by Uttlesford District Council. The illustrative layout has been provided to demonstrate that the proposed quantum of development can

be accommodated within the site. This plan is not for formal approval, and the detailed layout including the play area location is a reserved matter. The location of the play area can be relocated centrally to the site where there is also a greater opportunity for natural surveillance from the surrounding properties. This change is currently being made to the Reserved Matters application that is with Uttlesford.

### **Summary**

The matter of safety and the proximity of this development to the Fullers End Level Crossing has been considered and the level of intensification of use was not considered to be of a magnitude that would result in an unacceptable increase in risk in the usage of the crossing. An extant permission exists for this development, the only difference between the two is the proposed location of the vehicular access. Should Network Rail wish to revisit this matter through the submission of a further Rail Crossing Diversion Order, then that is for them to progress, and our clients will be happy to engage with them as necessary, but we must reiterate that the determination of this application should not be conditional on the outcome of a process being progressed under other legislation.

We trust the above is useful to the determination of this application.

Yours faithfully



Frazer Hickling  
Director  
PHILLIPS PLANNING SERVICES LTD

Enc.

Appendix A – Transport and Works Acts Order (TWAO) (Essex and Others Level Crossing Reduction Order 2022) Inspector’s Report to the Secretary of State for Transport (20 July 2020)



---

# Report to the Secretary of State for Transport

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Transport

Date: 20 July 2020

---

**TRANSPORT AND WORKS ACT 1992**

**TOWN AND COUNTRY PLANNING ACT 1990**

**THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION)  
ORDER 201X**

**APPLICATION FOR DEEMED PLANNING PERMISSION**

Dates of inquiry: 18 October 2017 – 13 February 2019

File Ref: DPI/Z1585/17/12

**ABBREVIATIONS & GLOSSARY**

AHB	Automatic half-barrier
ALCRM	All Level Crossing Risk Model
AONB	Area of Outstanding Natural Beauty
ATC	Automatic Traffic Counts
BR	Bridleway
BOAT	Byway Open to All Traffic
CBC	Colchester Borough Council
CCTV	Close Circuit Television
CWIS	Cycling and Walking Investment Strategy
DCO	Development Consent Order
DfT	Department for Transport
DIA	Diversity Impact Assessment
DMRB	Design Manual for Roads and Bridges
ECC	Essex County Council
EIA	Environmental Impact Assessment
ELAF	Essex Local Access Forum
EPR	Environmental Permitting (England and Wales) Regulations 2016
ETS	Essex Transport Strategy
FP	Footpath
FWI	Fatality Weighted Injuries
HMWT	Herts & Middlesex Wildlife Trust
LCM	Level Crossing Manager
LNR	Local Nature Reserve
LTP	Local Transport Plan
MfS	Manual for Streets
MSLs	Miniature Stop Lights
NFU	National Farmers' Union
NPPF	National Planning Policy Framework
NPSNN	National Policy Statement for National Networks
NRSA91	New Road and Street Works Act 1991
NTQP	Night-time Quiet Period
NWL	Northumbrian Water Limited
ORR	Office of Rail and Road
PCPA04	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PROW	Public Rights of Way
PSED	Public Sector Equality Duty
RMG	Royal Mail Group
RRRAP	Road restraint Risk Assessment Process
ROW	Rights of Way
ROWIP	Rights of Way Improvement Plan
RSA	Road Safety Audit
SOM	Statement of Matters
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest

TCPA	Town and Country Planning Act 1990
TfL	Transport for London
The 1980 Act	The Highways Act 1980
The 1992 Act	The Transport and Works Act 1992
The Scheme	Network Rail (Essex and Others Level Crossing Reduction) Order Scheme
TPO	Tree Preservation Order
TSR	Temporary Speed Restriction
TTRO	Temporary Traffic Regulation Order
TWA	Transport and Works Act
TWAO	Transport and Works Act Order
UWCT	User Worked Crossing with Telephone
VRS	Vehicle Restraint System

**TABLE OF CONTENTS**

Report section number	Section title	Page
	Case Details	5
1	Preamble	5
2	Procedural Matters	10
	Whether it is appropriate to use the TWAO procedure	10
	The tests to be applied	19
3	Strategic Matters	26
4	Planning and Policy Matters	53
5	Consideration of crossings to be stopped up	88
5.1	E01 Old Lane	88
5.2	E02 Camps	92
5.3	E04 Parndon Mill	101
5.4	E05 Fullers End	107
5.5	E06 Elsenham Emergency Hut	115
5.6	E07 Ugley Lane	122
5.7	E08 Henham	125
5.8	E09 Elephant	131
5.9	E10 Dixies	139
5.10	E11 Windmills	149
5.11	E13 Littlebury Gate House	155
5.12	E15 Margaretting	163
5.13	E16 Maldon Road	168
5.14	E17 Boreham & E18 Noakes	175
5.15	E19 Potters	183
5.16	E20 Snivellers	192
5.17	E21 Hill House 1	202
5.18	E22 Great Domsey	206
5.19	E23 Long Green	213
5.20	E25 Church 2	216
5.21	E26 Barbara Close	221
5.22	E28 Whipps Farmers	230
5.23	E29 Brown & Tawse	242
5.24	E30 Ferry & E31 Brickyard Farm	254
5.25	E32 Woodgrange Close	267
5.26	E33 Motorbike	275
5.27	E35 Cranes No. 1	286
5.28	E36 Cranes No. 2	291
5.29	E37 Essex Way	295
5.30	E38 Battlesbridge	303
5.31	E41 Paget	315
5.32	E43 High Elm	348
5.33	E45 Great Bentley & E46 Lords No. 1	356
5.34	E47 Bluehouse	366
5.35	E48 Wheatsheaf	372
5.36	E49 Maria Street	384

5.37	E51 Thornfield Wood & E52 Golden Square	389
5.38	E54 Bures	403
5.39	E56 Abbotts	412
5.40	H01 Trinity Lane	419
5.41	H02 Cadmore Lane	424
5.42	H04 Tednambury	427
5.43	H05 Pattens, H06 Gilston & H09 Fowlers	434
5.44	H08 Johnsons	446
5.45	HA01 Butts Lane	449
5.46	HA02 Woodall Crescent	454
5.47	HA03 Manor Farm & HA04 Eve's	459
5.48	T01 No. 131	468
5.49	T04 Jefferies	475
5.50	T05 Howells Farm	484
6	General Representations	494
7	Mitigation	495
8	Compulsory Purchase	501
9	Conditions	507
10	Funding	509
11	Procedural Requirements	511
12	Modifications	512
13	Any Other Matters	518
14	Recommendations	519
Appendix 1	Appearances	
Appendix 2	Core documents	
Appendix 3	Other parties' Statements of Case	
Appendix 4	Network Rail Proofs of Evidence	
Appendix 5	Other parties' Proofs of Evidence	
Appendix 6	Network Rail rebuttal proofs	
Appendix 7	Other parties' rebuttal proofs	
Appendix 8	Network Rail inquiry documents	
Appendix 9	Other parties' inquiry documents	
Appendix 10	Suggested conditions if E51 & E52 are omitted from the Order	
Appendix 11	Suggested conditions if E51 & E52 are included in the Order	



## **CASE DETAILS**

### **THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER 201X**

#### **And**

### **APPLICATION FOR DEEMED PLANNING PERMISSION**

- The Order would be made under sections 1 & 5 of, and paragraphs 2 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the Transport and Works 1992.
- The deemed planning permission would be granted by a Direction under section 90(2A) of the Town and Country Planning Act 1990.
- The application for the Order and deemed planning permission was made on 31 March 2017 and there were 190 objections outstanding to it at the commencement of the local inquiry.
- The Order and deemed planning permission would authorise the closure or downgrading of a number of level crossings in the Counties of Essex and Hertfordshire, in the London Borough of Havering, in the Borough of Thurrock and in the Borough of Southend-on-Sea. In relation to these closures or downgradings the Order would also authorise the carrying out of works including the removal of the crossings from the railway and the stopping up, diversion or downgrading of the status of certain public roads, footpaths, bridleways, restricted byways and byways open to all traffic and the creation of new public rights of way. The Order would also authorise the construction of new footbridges to carry public rights of way over drains or watercourses. The Order would also permit Network Rail to acquire land and interests in land in connection with the construction of the works to be authorised under the Order.

**Summary of Recommendation: That the Order as modified be made and that deemed planning permission be granted subject to conditions.**

---

## **1. PREAMBLE**

### **Pre-inquiry Meeting**

- 1.1 I held a pre-Inquiry meeting on 9 August 2017 to discuss procedural matters relating to the Inquiry. There was no discussion of the merits of the case for or against the proposals. A note following the meeting was circulated to all parties who had submitted objections or other representations.

### **The inquiry**

- 1.2 The inquiry opened on Wednesday 18 October 2017. On the morning of the third day of the inquiry, I was advised by the Department for Transport (DfT) that the Land Agents for Network Rail had undertaken an audit of the Book of Reference. That audit had revealed that a number of parties had not been served notice of the application contrary to the requirements of rule 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.
- 1.3 The audit revealed that 12 new parties had not been served notice of the application, that 12 existing parties had not been served notice in relation to land in which they had an interest and that 8 mortgage companies had not been served notice in relation to land in which they had an interest. In total 60 additional notices were required to be served. Notices were served

- on 30 October with parties having until 1 December 2017 to make representations or objections.
- 1.4 The inquiry was scheduled to sit for five weeks in total meaning that it was scheduled to finish before the expiry of the 42-day notice period to which the recipients of the notices were entitled. In the interests of fairness and natural justice to those parties who had not been served notice in relation to some or all of their land interests I adjourned the inquiry so that affected parties would have the benefit of that 42-day statutory period of notice in which to fully consider the implications of the application as it affected their interests and to make objections or representations to the Order.
- 1.5 During the adjournment, I was further advised that on 8 November 2017, Network Rail had served a further 14 additional notices on 12 new interests in relation to 6 plots of land and that on 23 November 2017, 12 further notices were served on 2 existing parties (one of whom also had notice on 20 October for a different land interest).
- 1.6 The inquiry remained adjourned until Tuesday 25 September 2018 to enable the inquiries into similar Orders in Cambridgeshire (DPI/Z1585/17/11) and Suffolk (DPI/V3500/17/13) (scheduled to commence in December 2017 and February 2018 respectively) to proceed without interruption.
- 1.7 The inquiry resumed on 25 September 2018 and sat for 7 consecutive weeks before adjourning once again on 9 November 2018. Thereafter the inquiry sat on 20-23 November 2018, 4 – 6 December 2018 and 29 January 2019 to 13 February 2019, a total of 48 sitting days.
- 1.8 Mrs Joanna Vincent was appointed as independent Programme Officer for the inquiry. Her role was to assist with the procedural and administrative aspects of the inquiry, including the programme and timing of the appearance at the inquiry of those parties who had made representations or objections to the proposals for particular level crossings. Mrs Vincent helped greatly to ensure that the proceedings ran efficiently and effectively but has played no part in the production of this report or the conclusions and recommendations found within it.
- 1.9 On various dates prior to and during the inquiry, I made unaccompanied inspections of the level crossings at issue and the proposed alternative routes. Some of the proposed alternative routes followed in whole or in part existing public highways and I was able to undertake a thorough inspection of those routes. Where the proposed alternative routes involved the diversion of the existing PROW to a new alignment over private land, I viewed the proposed alternative route to the best of my ability from public vantage points.
- 1.10 Accompanied site visits were requested by the Ramblers and Essex County Council (ECC) to a number of the crossings to which objections had been made. These inspections were undertaken on 14, 15, 26, 27 and 28 February 2019 and 12 and 13 March 2019.

## Structure of the Report

- 1.11 This report deals firstly with the procedural matters raised at the inquiry in respect of the use of s1 and s5 of the Transport and Works Act 1992 (the 1992 Act) in relation to the proposed closure of railway crossings. The report then deals with the arguments relating to the strategic matters advanced by Network Rail in support of its application for the Order.
- 1.12 In August 2017 the DfT issued a Statement of Matters (SOM) pursuant to rule 7 (6) of the Transport and Works (Inquiries Procedure) Rules 2004. This document sets out the matters about which the Secretary of State wishes to be informed for the purposes of his consideration of the order and the application for deemed planning permission. This Report sets out the relevant SOM, with comments, as appropriate in each section. The SOM are set out below:

SOM1 The aims and the need for the proposed Network Rail (Essex and Others Level Crossing Reduction) Order Scheme ('the Scheme').

SOM2 The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme.

SOM3 The extent to which the proposals in the Transport and Works Order (TWAO) are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies.

SOM4 In relation to each of the 58 level crossings to be closed, the 2 level crossings to be re-designated, and the proposed diversionary routes to be created: (a) the likely impacts on landowners, tenants, local businesses, the public, utility providers and statutory undertakers, including any adverse impact upon their ability to carry on their business or undertaking or access their properties; (b) impacts upon other users; (c) impacts on flood risk; (e) impacts on any Site of Special Scientific Interest and local wildlife sites; (f) impacts on the landscape, agricultural land and forestry; (g) any other environmental impacts including noise and health; (h) the suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed<sup>1</sup>.

SOM5 The measures proposed by Network Rail to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWAO or other measures to safeguard the operations of utility providers or statutory undertakers.

SOM6 Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the MHCLG 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"<sup>2</sup>

---

<sup>1</sup> The Secretary of State will note that SOM4 does not contain a SOM4(d).

<sup>2</sup> Current guidance was published in July 2019

SOM6 (a) whether there is a compelling case in the public interest for conferring on Network Rail powers compulsorily to acquire and use land and rights in land for the purposes of the scheme; and

SOM6 (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.

SOM7 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).

SOM8 Network Rail's proposals for funding the scheme.

SOM9 Whether the statutory procedural requirements have been complied with.

SOM10 Any other matters which may be raised at the inquiry.

1.13 The railway crossings at issue are dealt with individually or in groups as appropriate within sub-sections of Section 5 of the report as set out in the table below.

Report sub-section	Crossing number	Crossing name
5.1	E01	Old Lane
5.2	E02	Camps
5.3	E04	Parndon Mill
5.4	E05	Fullers End
5.5	E06	Elsenham Emergency Hut
5.6	E07	Ugley Lane
5.7	E08	Henham
5.8	E09	Elephant
5.9	E10	Dixies
5.10	E11	Windmills
5.11	E13	Littlebury Gate House
5.12	E15	Parsonage Lane / Margaretting
5.13	E16	Maldon Road
5.14	E17 & E18	Boreham & Noakes
5.15	E19	Potters
5.16	E20	Snivellers
5.17	E21	Hill House 1
5.18	E22	Great Domsey
5.19	E23	Long Green
5.20	E25	Church 2
5.21	E26	Barbara Close
5.22	E28	Whipps Farmers
5.23	E29	Brown & Tawse

5.24	E30 & E31	Ferry and Brickyard Farm
5.25	E32	Woodgrange Close
5.26	E33	Motorbike
5.27	E35	Cranes No 1
5.28	E36	Cranes No 2
5.29	E37	Essex Way
5.30	E38	Battlesbridge
5.31	E41	Paget
5.32	E43	High Elm
5.33	E45 & E45	Great Bentley Station and Lords No 1
5.34	E47	Bluehouse
5.35	E48	Wheatsheaf
5.36	E49	Maria Street
5.37	E51 & E52	Thornfield Wood and Golden Square
5.38	E54	Bures
5.39	E56	Abbotts
5.40	H01	Trinity Lane
5.41	H02	Cadmore Lane
5.42	H04	Tednambury
5.43	H05, H06 & H09	Pattens, Gilston and Fowlers
5.44	H08	Johnsons
5.45	HA01	Butts Lane
5.46	HA02	Woodhall Crescent
5.47	HA03 & HA04	Manor Farm and Eve's
5.48	T01	No 131
5.49	T04	Jefferies
5.50	T05	Howells Farm

- 1.14 Section 5 contains brief descriptions of each railway crossing and its surroundings, a description of the proposal for each crossing, the gist of the evidence submitted by the parties in relation to that proposal and my conclusions in relation to the matters identified in SOM4 together with a recommendation regarding each crossing.
- 1.15 The Secretary of State will note that the Report deals with 57 crossings. Network Rail have withdrawn E12 Wallaces, E42 Sand Pit, E57 Wivenhoe Park and H03 Slipe Lane from the draft Order.
- 1.16 The submissions of the parties on other matters found in the SOM are dealt in appropriate sections with conclusions set out in relation to each of those sections.

## 2. PROCEDURAL MATTERS

### **Whether use of the Transport and Works Act 1992 is appropriate**

#### **The Case for the Ramblers**

- 2.1 It was contended by the Ramblers that the use of the 1992 Act procedure to secure the diversion of PROWs over level crossings was inappropriate as other mechanisms existed whereby such diversions could be achieved were available to Network Rail. The substantive points of the Ramblers' submissions are as follows.
- 2.2 The powers to close and divert PROWs over level crossings existed within s118A and s119A of the 1980 Act which have been specifically designed to enable railway operators to stop up and divert footpaths, bridleways and restricted byways that cross railways. The provisions of the 1980 Act are the correct statutory procedures which should be applied by Network Rail to carry out the level crossing closures under the Order.
- 2.3 It is recognised that the 1992 Act provided for a number of subsidiary, but necessary, powers to be available for inclusion in an Order to enable 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 the power to make byelaws.
- 2.4 Part II of the 1992 Act created an updated statutory framework for ensuring the "safety of railways", which, by way of s47 and schedule 2, introduced two new provisions to be inserted into the 1980 Act: s118A and s119A. In short, these provisions allow for orders to be made for the stopping up (s118A) and diversion (s119A) of footpaths, bridleways and restricted byways which cross railways. These sections have their own specific procedure for applications and consultation. Section 48 of the 1992 Act was designed to complement s47 in that the Secretary of State could order the operator of the railway to provide a tunnel or bridge as a replacement for a level crossing.
- 2.5 It is evident that Part II of the 1992 Act was carefully designed for the exact same purpose which underlies the scheme that Network Rail is currently pursuing by way of the Order. Parliament was aware, at the time of enacting the 1992 Act, that 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 effect 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.
- 2.6 Within this context, it is clear that Parliament intended for s118A, s119A of the 1980 Act and s48 of the 1992 Act 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 s48 the 1992 Act:

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

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

*An inquiry may be necessary to decide whether it is reasonably practicable to retain a crossing and to make it safe for use by the public. In such cases it would be premature to publish a draft bridge order as that would prejudice the outcome of the operator's application. If the inquiry inspector recommended that a crossing was unsafe and could not be made safe, but should not be closed, a structure would be needed and the Secretary of State would consider making an order. The Department of the Environment and the Department of Transport will make all the administrative arrangements to ensure that each is aware of the diversion and extinguishment applications"<sup>3</sup>*

- 2.7 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 s118A or s119A of the 1980 Act; alternatively, the Secretary of State was given powers to require a bridge or tunnel to be constructed under s48 of the 1992 Act.
- 2.8 The sole purpose of the Order is to close level crossings. Whilst Network Rail claim that they are seeking to close the crossings for reasons of improving operational efficiency, it is clear from Network Rail's statement of case that the key justification for the crossing closures is its concerns about safety. Whilst there have previously been TWAOs confirmed that seek solely to close one or two level crossings and/or divert PROWs, the scale of this Order, in seeking to close 60 crossings across a whole county, is wholly unprecedented. The Ramblers contend that confirmation of previous orders does not act as a bar to establishing the inappropriateness of the use of the 1992 Act for such schemes.
- 2.9 They argue that, by this Order, Network Rail attempts to bypass the specific statutory scheme that was designed by the 1992 Act to accommodate the closure of level crossings. They accept that there are a number of different legislative provisions by which the closure or diversion of public rights of

---

<sup>3</sup> *Hansard*, HC, Vol 204, col 485.

way can be achieved, and that the existence of one such power does not, necessarily, prevent the use of another. However, they contend that, having regard to the statutory intention behind the TWA as outlined above, it is clear that Network Rail's proposed use of the TWA for this scheme would frustrate the statutory purpose of s118A and s119A of the 1980 Act.

- 2.10 Network Rail have, however, sought to defend their use of the 1992 Act on several grounds, none of which they believe have merit. Firstly, Network Rail have argued that s118A and s119A 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 asserts that only a TWAO can address issues in addition to safety concerns.
- 2.11 However, s118A and s119A allow for other issues to be considered under the broader "expediency" test (at the stage of confirming the order). Furthermore, it is clear that safety concerns are the driving concern behind Network Rail's scheme. If Network Rail were to be allowed to bypass the s118A and s119A procedures simply by pointing to the further operational benefits to be gained from closing the crossings, then there is a risk that s118A and s119A 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 TWAO and avoid meeting the tests set out in s118A and/or s119A. 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.
- 2.12 Secondly, Network Rail have argued that a TWAO allows a more comprehensive approach to crossing closures, allowing multiple closures to be achieved through one order. This may well be true, but the Ramblers consider that such an efficiency-based argument does not make the process lawful.
- 2.13 They consider that whilst Network Rail also argue that the Order will grant several ancillary powers which fall within the ambit of a TWAO, to enable the closure of level crossings, that the process would be easier for Network Rail does not make it lawful. They believe that the whole Order is directed towards the closure of level crossings which is a matter within the ambit of s118A and s119A of the 1980 Act. For the reasons given above, they consider that where the focus of an order is the closure of such level crossings, it should be sought under s118A and s119A of the 1980 Act.
- 2.14 Whereas Network Rail argue that s118A and s119A of the 1980 Act do not apply to BOATs or other public highways, the Ramblers consider that provisions of s116 and s117 of the 1980 Act are available for the stopping up or diversion of any highway that is not a trunk road or a special road. In their view, whilst s116 requires an application to be made by the highway authority, s117 specifically enables any person, who desires a highway to be stopped up or diverted, to request that the highway authority make an application under s116. The powers to downgrade highways subject to the retention of footpath, bridleway or restricted byways are available under



- s116 (4) of the 1980 Act and s116 (3) provides that local authorities have a right of veto over any proposed order.
- 2.15 They consider that, if Network Rail is seeking to frustrate this intricate statutory scheme through use of a TWAO, having recognised that use of the s116, s117, s118A or s119A process does not guarantee success and can be costly and time consuming. Also, Network Rail has consciously sought to bypass the protections under the 1980 Act, mainly due to the fact that they cannot “guarantee” success. Instead they are attempting to use a TWAO by simply referencing “the greater public benefit of improved railway services”.
- 2.16 The Ramblers consider that reliance can be placed upon the provisions of s13(2) of the 1992 Act: *“Where an application has been made to the Secretary of State under section 6 above and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order...”*
- 2.17 When promoting this sub-section, the Minister stated (in response 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 orders to sidestep the established procedure for extinguishing rights of way, where such a proposal was not related to a works matter that belonged to the new procedure.”*
- 2.18 The same concern is evident at paragraph 1.14 of A Guide to TWA Procedures: *...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”.*
- 2.19 The provisions found in the 1992 Act should not enable applicants to circumvent established procedures for extinguishing rights of way in circumstances where the extinguishment (and/or diversion) of PROWs 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”. In their view, it is clear, from the above quote, that the TWA is not designed to accommodate this type of application.
- 2.20 The catch-all provision of section 5(6) of the 1992 Act 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 TWAO solely concerned with closure of level crossings, for which the 1992 Act itself has provided a designated legislative process. The object of the Order can be achieved by other means and the Order should be refused on these grounds.

### **The Case for Essex Local Access Forum (ELAF)**

- 2.21 ELAF consider that during the inquiry it became clear that the crossings in the TWAO had not been selected on safety grounds. The crossings were selected by Network Rail because there is a non-at grade crossing not far away up or down the railway line and so no bridging or underpass works were required on the railway line. The few bridges that are proposed are over drainage ditches /watercourses. Height differences are dealt with by steps rather than by ramps which is against the spirit of accessibility for all. With no major engineering works proposed, the ELAF sees no need to use an Act whose purpose is to enable major works and infrastructure projects like HS2.
- 2.22 They consider that s118A and s119A of the 1980 Act are procedures specifically for the closure and diversion of PROWs that cross railway lines. ELAF contend that, with the geographic scattering of the mainly foot crossings in this TWAO, these established procedures should have been used instead of the procedures of the 1992 Act.

### **The Case for Network Rail**

- 2.23 They state that the Order is pursued under s1 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.
- 2.24 Reducing the number of level crossings across the network is a key, strategic priority for them, 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 ‘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.
- 2.25 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 s1 of the Act. Clearly, the reduction of risk both to the railway and to crossing users is a material objective, and benefit, which would be realised by the Order. It is not, however, the ‘key’ justification for the Order.
- 2.26 They believe that the Order proposals could not be pursued through the other statutory regimes. The procedures under s118A of the 1980 Act may only be used 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.
- 2.27 Nor do they believe that this power could be used to stop up a PROW for the objectives pursued by this Order: the power conferred by s118A 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. Further, it is in the discretion of the highway authority whether such an order should be pursued. E16 Maldon Road was the subject of a s118 Order not pursued by the highway authority due to objections being made to it by the Ramblers.

2.28 The same problems apply as with s119A. In addition, although that section provides for the PROW to be diverted onto other land, no provision is made for the acquisition of land or rights of access to land for the construction of the new right of way or the removal of the crossing infrastructure. Furthermore, the 1980 Act does not grant planning permission for any physical works, such as the construction of bridges, steps or ramps.

2.29 Whilst s116 of the 1980 Act extends to public carriageways, it is even more limited as to the basis on which an order can be made. The focus, in s116(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.

2.30 Thus, none of the other statutory procedures which the Ramblers contend should be used instead of the TWAO procedure could, in fact, be used to achieve the strategic objectives which underlie the current application. That is also the simple response to the reliance placed on para 1.14 of the TWA Guidance: the proposals contained within this Order are simply not proposals which could be dealt with under existing, statutory procedures in Network Rail's view.

2.31 In any event, those proceedings would only be available where PROWs across the railway are affected. Not all the crossings in this Order are subject to public rights<sup>4</sup>. Further, the objectives of this Order are ones which the relevant provisions of the 1980 Act simply do not take into account; the sole basis for closure under s118A or s119A is the safety of users of the crossing. That is only part of the objectives sought to be achieved through this Order.

2.32 The safety of users of the railway (as opposed to the safety of users of the PROWs), its operational efficiency, reliability, resilience and future capacity are all elements of the strategic case advanced through this Order. Section 116, s118A or s119A simply do not provide for closure for those wider reasons. The proposals contained within this Order are simply not proposals which could be dealt with under other existing, statutory procedures.

2.33 The Ramblers submit that s13(2) of the 1992 Act 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*".

---

<sup>4</sup> E07 & H09 relate to the extinguishment of private rights and H01 seeks to downgrade a public road to bridleway status with the grant of a licence for vehicular access over the railway

- 2.34 The starting point here is "*the order applied for*" – i.e. that which Network Rail is seeking through this application. 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.
- 2.35 These matters simply could not be achieved under the 1980 Act processes.
- 2.36 The power under s13(2) of the 1992 Act is, in any event, a discretionary power. The Secretary of State is not required to refuse the Order even if the objects of the Order (contrary to these submissions) could have been met by other means. If and to the extent the Secretary of State considers it necessary to consider exercising his discretion under s13(2) of the 1992 Act, 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<sup>5</sup>.
- 2.37 Network Rail consider that the reliance which the Ramblers placed upon s48 of the 1992 Act is wholly misplaced. The exercise of this power, as with s118A, is again premised on the crossing constituting a danger to members of the public – not the wider objectives sought to be achieved by this Order.
- 2.38 Secondly, they consider that the Ramblers reliance on this provision wholly fails to acknowledge that s48 does not confer a power on the operator to acquire land or rights necessary to provide (or improve) the bridge or tunnel, or indeed any other powers required to construct the bridge. This is clear from s48(7) – which makes express reference to the operator potentially needing to use the TWA procedures in order to acquire the necessary land or rights.
- 2.39 Network Rail contend that there is simply no basis for concluding that a TWAO is not an appropriate, and lawful, means of seeking to effect the objectives of this Order

---

<sup>5</sup> NR 122 Ammanford Level Crossing Order 1996 (no associated works); Northumberland Park and Coppermill Lane Closure Order 2017 (only work was a replacement footbridge); Abbots Ripton Level Crossing Order 2017 (no associated works).

### **Inspector's conclusions on whether the use of the Transport and Works Act is appropriate**

- 2.40 Section 118A and s119A of the 1980 Act were introduced into that Act retrospectively by s47 and Schedule 2 of the 1992 Act. Section 118A and s119A provide for the extinguishment or diversion of a PROW which crosses a railway line where the provisions set out in those sections are met. The provisions are applicable to public footpaths, bridleways and restricted byways which cross the railway on the level.
- 2.41 Subsections 1 of both s118A and s119A are to be applied in those cases where it appears to the highway authority to be expedient in the interests of the safety of the public using the crossing that it should be stopped up (s118A) or diverted (s119A) onto land in the same or another ownership. Section 119A also provides for the diversion of so much of the PROW which includes the crossing as the highway authority considers requisite.
- 2.42 In giving consideration to any order made under these provisions, the confirmatory body must be satisfied that it is expedient to do so having regard to all the circumstances, paying particular attention to whether it is reasonably practicable to make the crossing safe for use by the public.
- 2.43 Whilst the Ramblers dispute Network Rail's justification for not making orders under s118A and s119A, the emphasis of these two sections is on the consideration of the extent to which the safety of members of the public using the crossing is put at risk by the interaction of the public with an operational railway. Given that the emphasis of the two sections is on closure of railway crossings where the highway authority considers there to be a risk to the safety of those using them, it would be inappropriate to use these provisions to seek the closure of public rights of way which cross the railway which are not considered to pose a risk to the safety of the public.
- 2.44 Although there are some crossings within the Order which are considered to pose a risk of danger to the public (some having been closed under temporary road traffic regulation orders on the grounds of public safety), other crossings included within the Order have been the subject of infrastructure upgrades and the application of technology to mitigate the assessed risk. Some crossings appear to pose a moderate or low risk to those using them.
- 2.45 For those crossings included in this order where improvements have been made to the crossings by the installation of assistive technology (MSLs incorporated or overlain on the signalling system) to mitigate risk, the use of s118A or s119A may be inappropriate.
- 2.46 The Ramblers submit that matters other than public safety can be considered under a s118A extinguishment or s119A diversion order as the decision maker is required to consider whether such action is "*expedient in all the circumstances*". Whilst what may be taken into account under "*expediency*" is likely to be quite broad, it is nonetheless a test to be applied in the overall context of those sections which are primarily directed at a consideration of whether a crossing should be extinguished or diverted

- given the risk of danger use of it poses to the public. Matters such as the safety of users of the railway, its operational efficiency and future capacity, all matters advanced by Network Rail as part of its strategic case for the Order, would not provide justification for the closure of a crossing under s118A or s119A.
- 2.47 Although s119A provides for the diversion of the footpath onto other land (which may or may not be in the same ownership), this section is silent as to how that diversion is to be implemented. Whilst s28 compensation for disturbance or loss may be applicable, there is no mechanism whereby access to the land can be obtained or the use of land for any necessary works can be acquired [2.28].
- 2.48 The provisions of the 1980 Act are also only applicable to those routes which are PROW, and it would not be possible for the closure of accommodation crossings to be achieved using these procedures [2.31]. The 1992 Act procedures allow for private rights to be addressed where it has not been possible to reach agreement with the private rights holder.
- 2.49 The Ramblers submit that the Secretary of State would be justified in determining not to make the Order on s13(2) grounds as the crossings could be closed under a different legislative procedure, and that the Secretary of State's own guidance is that approval of a TWAO would be unlikely where no new works requiring a TWAO are being proposed [2.16, 2.18].
- 2.50 In response, Network Rail submits that s13 (2) has to be considered in the light of the objectives of the order applied for and sets out those powers which the Order would confer and which are not available under the provisions of sections 116 to 119 of the 1980 Act [2.33, 2.34].
- 2.51 There are no engineering works associated with this Order, and the only works set out in the schedule to the Order relate to the proposed construction of footbridges over ditches and minor watercourses. Whilst the Ramblers contend that the use of the TWAO procedure is inappropriate in such circumstances, the Northumberland Park and Abbots Ripton Orders [2.36] both made provision for the closure of pedestrian rights of way over the railway on the level, in addition to conferring ancillary powers to facilitate the closure of those crossings and for the construction of alternative means by which the railway could be crossed.
- 2.52 Whilst s116 to s119 of the 1980 Act provide an 'intricate statutory scheme' [2.15] for the stopping up or diversion of PROWs over railway crossings, those sections would not confer upon the applicant the objectives of the Order applied for under the 1992 Act. As such, I conclude that the use of the 1992 Act procedure is appropriate.

## **The Tests to be Applied**

### **The Case for Network Rail**

- 2.53 If 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 one of two grounds. Either that an alternative route has not been provided but is required or that the alternative route is not "suitable and convenient".
- 2.54 Consideration of the Order is therefore a two-stage process. Firstly, is the strategic case for rationalisation of the level crossing estate through removal of the Order crossings from the network made out? Determination of this matter does not involve consideration of whether a suitable and convenient alternative route has been provided at a specific crossing.
- 2.55 The second stage of the process is the consideration of the proposals for individual crossings. If the Secretary of State is satisfied that an alternative right of way is required but has not been provided, or that the alternative right of way proposed is not a suitable and convenient replacement for existing users, then the PROW over that crossing cannot be extinguished: s5(6).
- 2.56 If, however, the Secretary of State considers that either an alternative right of way is not required, or that the alternative right of way proposed is a suitable and convenient replacement for existing users, then the prohibition in s.5(6) of the 1992 Act is not engaged, and Network Rail may, legally, extinguish the PROW passing over the crossing.
- 2.57 There is no case for importing the second stage test into the first stage.
- 2.58 The note entitled 'Note on section 5(6) TWA 1992 – "required"' sets out Network Rail's approach to whether the provision of a new (alternative) right of way is required. Network Rail's view is that;
- (a) provision of a new (alternative) right of way is not "required" where no public rights of way exist over a crossing;
  - (b) when considering whether an alternative right of way needs to be provided, if a diversionary route would be provided by the existing PROW or highway network then provision of an alternative right of way is not required;
  - (c) an assessment has to be made as to whether an existing route is (or could be made) "suitable and convenient" taking into account the views of the Highway authority;
  - (d) where the existing PROW/highway network does not provide a potential diversionary route or that route would not be suitable and convenient, an alternative right of way would need to be provided

- 2.59 In considering whether an alternative route is suitable and convenient, account has to be taken of the purpose and use of the existing route, its local environment, and relationship with the wider PROW network. Consideration has been given to the function served by the existing PROW, having regard to the origin and destination points, desire lines, and whether the route is (e.g.) a utility route or a leisure route. It is common ground between ECC and the Ramblers that these are all matters to be taken into account. Where there is no agreement is on whether the factors to be considered should also include the quality of experience of using the route (i.e. enjoyment of the route).
- 2.60 That distinction – function as against quality of experience – encapsulates the primary point of disagreement between the parties when considering the application of the statutory test to the Order proposals.
- 2.61 In determining whether a proposed alternative route is “suitable and convenient”, the statutory context in which that test falls to be applied, and the consequences of the test not being met has to be borne in mind. The Scheme is pursued under the 1992 Act, not the 1980 Act. That is an important distinction.
- 2.62 The focus, on applications under s118A, s119A or s116 of the 1980 Act 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 1992 Act.
- 2.63 The guidance is notably silent on any requirement to consider enjoyment of the route as a whole, as found in s119A of the 1980 Act. Nor does the guidance invite a comparative exercise between the established PROW and its replacement: the suggestion that the use of the word “replacement” in Annex 2 of the TWA Guidance imports such an exercise is unsustainable.
- 2.64 The 1992 Act provides an authorising regime for transport projects, and s5(6) of that Act provides an important protection for public rights of way which need to be disturbed or diverted in order for a transport scheme to be implemented. In this context it is clear that the focus on ‘function’ as opposed to more subjective consideration of ‘enjoyment’ is correct.
- 2.65 It would be unreasonable if a transport scheme which would realise significant public benefits were to be precluded from coming forward, 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.
- 2.66 Network Rail submits that the correct approach to be adopted is to look at the existing use of the crossing and those currently using it having regard to the characteristics of and constraints present on the existing PROW, and the purposes it serves. It is acknowledged that future occupants of consented developments in the vicinity of the crossing can be included within that group.



2.67 Network Rail does not agree, however, that "existing users" requires the Secretary of State to have regard to any person who might be legally entitled to use the route (but for whom the route is not usable perhaps due to accessibility constraints), or who might, theoretically, do so in the future. The language used in the published guidance which focuses on existing users indicates that enhancement of the public rights of way network is not being sought under s5(6).

### **The Case for the Ramblers**

2.68 The Order is promoted under s1 and s5 of the 1992 Act. In determining whether or not a TWAO should be made under s1, a very wide discretion has been afforded to the Secretary of State. The question for the Secretary of State under s1 is simply whether or not the case for the Order has been justified and whether or not the Secretary of State, therefore, considers that the Order should be made. The exercise of this general discretion, to determine whether or not the Order should be made, is entirely distinct from the test set out in s5(6) of the 1992 Act.

2.69 The application of the test found in s5(6) to any railway crossing assumes that the Order has been justified under s1. Section 5(6) provides a test for when a PROW over a crossing *can* be extinguished. It does not set out a test for when a PROW *should* be extinguished.

2.70 Section 5(6) states: "(6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied- (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required". The Guide to TWA Procedures states, in Annex II on p. 105: "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".

2.71 In other words, s5(6) "restricts" what any TWAO can do to a PROW, but it assumes that the need for the TWAO has been justified on its own merits.

2.72 The complicating factor in this Order, arises through the way in which Network Rail has framed its "strategic case" for closure of level crossings. According to Network Rail's strategic case, the justification for being able to close a level crossing appears to depend entirely on there being a "suitable and convenient" alternative route so as to comply with the s5(6) test. In this way, Network Rail's underlying rationale for the Order – which considers whether or not level crossings "should" be closed – is applying the same wording and concepts as the s5(6) test – which simply determines whether or not public rights of way "can" be closed.

2.73 The distinction between the s1 test and the s5(6) test is crucial to a proper assessment of Network Rail's proposed Order. There should be no assumption that a proposed level crossing closure has been justified simply on the basis that the test in s5(6) has been met.

2.74 A restrictive interpretation of the scope of the test under s5(6) should not be applied. As set out in the 'Note on the meaning of suitable and

convenient<sup>6</sup>, there are outstanding disagreements between Network Rail and the Ramblers as to the parameters of s5(6) namely, as regards the extent to which the s5(6) test: (i) encompasses a comparative assessment between the existing route and the proposed diversion; (ii) involves a consideration of the “quality” of the route or the public enjoyment of the route; and, (iii) covers certain groups within the term “existing users” (most notably, whether this term includes all those categories of users who have a legal right to use the ROW).

2.75 The Ramblers submit that the underlying issue is quite simple. The question which needs to be answered is “what is the standard that an alternative route must meet in order for it to justify the closure and diversion of a PROW over a level crossing?” In the Ramblers submission, the comparative enjoyment of the alternative route vis-à-vis the existing route will be an important consideration.

2.76 In the context of this Order, s5(6) is not being applied in the usual way. It is being used as the *justification* for closure of a level crossing. According to Network Rail, if the test in s5(6) has been met, then its Order proposal for a particular level crossing has been justified under s1 of the TWA, having regard to the general issues associated with all level crossings.

### **Inspector’s conclusions on the tests to be applied**

2.77 It appears to be common ground between the parties that consideration of the Order and the crossings identified within it is a two-stage process [2.54, 2.73]. However, the Ramblers contend that Network Rail has used the test found in s5(6) to be applied to each of the crossings as an overall justification for the Order to be made under s1; Network Rail disputes this contention.

2.78 The test found in s5(6) is a protective measure to ensure that where a PROW has to be disturbed as part of the delivery of a transport scheme, an alternative route should be provided where one is required. The published guidance provides that in such cases, the alternative route should be suitable and convenient for existing users. These are quite clearly matters which have to be considered in relation to each of the crossings proposed to be closed (and are considered in relation to SOM 4 below) and can be considered if the case for making the Order under s1 is met.

2.79 Whether the making of the Order is justified is dependent upon an analysis of the strategic case advanced by Network Rail. Consideration of such matters is given in Section 3 below. I am not persuaded by the submission made by the Ramblers [2.76] that Network Rail seeks to justify the making of the Order on the basis that the proposed alternative routes are suitable and convenient for those current users of the crossings. Network Rail has advanced a case for the making of the Order based on a national and regional strategy for a reduction in its level crossing estate to provide improvements in operational efficiency, capacity increases, the safety of

---

<sup>6</sup> NR 135

those interacting with the railway and operational, maintenance and renewal costs savings. These are matters which are considered in Section 3 below.

- 2.80 As part of the two stage process, consideration is to be given to the merits of the case advanced by Network Rail in relation to the making of the Order under s1, and if it is concluded that the Order should be made, then consideration should be given to whether each of the alternative routes proposed satisfied the tests found in s5(6).
- 2.81 Section 5(6) of the 1992 Act states "*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.*" In those instances where an alternative right of way is required, s5(6) (a) does not provide any clarification as to the matters to be considered in assessing that alternative route.
- 2.82 Some clarification as to how the test in s5(6) is to be addressed is found in the published guidance<sup>7</sup> which notes "*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.*" Additional clarification as to the matters which can be taken into account in determining whether an alternative route is 'suitable' is given in SOM(4) where matters such as the length, safety, design, maintenance and accessibility of any proposed alternative route can be taken into consideration in determining the 'suitability' of that alternative route.
- 2.83 No additional guidance has been provided as to what factors can be taken into consideration in determining whether a proposed alternative would be 'convenient' for use by the public and this term should be given its ordinary meaning. Although there is some common ground between the parties about the meaning of 'suitable and convenient' and examples of dictionary definitions of those terms have been submitted<sup>8</sup>, there is not consensus on all matters.
- 2.84 The principal disagreement appeared to be whether a consideration of the 'enjoyment' to be derived from using a given route over a given crossing can be taken into account (such a test being found within s119A of the 1980 Act in relation to the diversion of a PROW which crosses the railway) or whether the s5(6) test relates to the provision of an alternative route which would perform the same function as the existing crossing in allowing users to cross the railway [2.64, 2.75].
- 2.85 There is nothing in s5(6) of the 1992 Act or the published guidance which indicates that the quality of the experience of walking an existing PROW or the enjoyment to be derived from such an experience forms part or should

---

<sup>7</sup> A Guide to Transport and Works Act procedures Annex II page 105

<sup>8</sup> NR 135

form part of the test being applied in relation to a diversion which arises in consequence of an order made under s1.

- 2.86 As Network Rail point out, the tests found in s5(6) are applicable in relation to a transport scheme where the aims of that transport scheme require the diversion of public rights of way. What is required in such circumstances is that where an alternative route is required, that alternative route should provide broadly the same function and purpose as the existing route and enable those currently using the crossing to continue to undertake their current journey without disrupting the purpose for which that journey is being undertaken.
- 2.87 In my view, there is no scope for the importation into the s5(6) test of a consideration of the 'enjoyment' to be derived from the use of a particular PROW such as is found in s119A of the 1980 Act; had such a test been envisaged as part of s5(6), then Parliament would have made such provision. What is required under s5(6) is a consideration of the proposed alternative route in terms of whether it would provide a 'suitable and convenient' route by which current users could continue to make their journey without affecting the purpose of that journey.
- 2.88 A further matter of contention was whether the reference to 'existing users' in the published guidance should be taken literally or whether that reference encompassed a consideration of all those who were legally entitled to use the crossing but could not do so due to existing constraints [2.67, 2.74].
- 2.89 It may be that location, topography and other physical characteristics influence the nature of the use of a crossing and limit those who can use it. A crossing in an isolated rural location used primarily for recreational purposes is likely to have a different user cohort from that found in an urban or semi-urban location which is used for utilitarian purposes. It is implicit from the published guidance that for an alternative to be 'suitable and convenient', the characteristics of the alternative route should not be such that current users are inhibited or prevented from using it. However, this does not mean that a proposed alternative could be viewed as being 'suitable and convenient' if it only permitted use by an already restricted group.
- 2.90 Whilst there may be constraints upon the existing crossing points of the railway or the approaches to those crossing points which currently preclude use by those legally entitled to do so, an assessment of the proposed alternative cannot be made simply in the light of those who currently can undertake and complete a journey using the crossing in question.
- 2.91 To give consideration to only whether those currently using a crossing (who may be young and with no mobility impairments) were able to use the proposed alternative is unlikely to discharge the PSED if the proposed alternative route discriminated against other users in not providing for their needs.
- 2.92 Consideration of the needs of current and potential users is reflected in matters such as length, safety, design, maintenance and accessibility being

taken into consideration under the 'suitability' test. Whilst those who might qualify as 'existing users' may be restricted by topography or other factors the proposed alternative should not seek to perpetuate those restrictions.

- 2.93 A consideration of each of the proposed alternatives and whether those alternatives can be regarded as 'suitable and convenient' is found in Section 5 of this report.
- 2.94 There are a number of routes at issue in this Order (E07 Ugley Lane, E10 Dixies, E23 Long Green, E26 Barbara Close, E32 Woodgrange Close, E36 Cranes No 2, E43 High Elm, E49 Maria Street, E54 Bures, HA01 Butts Lane, and HA02 Woodhall Crescent) where Network Rail does not seek authority for the creation of wholly new public rights of way (whether on its own land or over third party land) as it considers that the existing highway network within the vicinity of the crossing provides an alternative means by which the public can cross the railway.
- 2.95 The closure of these crossings represents an extinguishment of the PROW over the crossing (and so much of the PROW leading to or from it as may also be closed) as opposed to a diversion of that right of way. However, what has to be considered in such cases is not whether the PROW is to be extinguished or diverted but whether an alternative route is or is not required to be provided.
- 2.96 Where the existing public rights of way and highway network provide a route whereby users of the crossing may cross the railway the duplication of such routes by the provision of new PROW would be illogical and an unwise use of public funds. In some cases, the existing highway network could provide an alternative means of crossing the railway.
- 2.97 Irrespective of whether the alternative route comprises wholly new PROW or existing highways or a combination of the two, the Secretary of State has to be satisfied that the suggested alternative will be suitable and convenient for use by existing users of the crossing.

### 3. STRATEGIC MATTERS – The Case for the Applicant, Network Rail

3.1 In support of Network Rail's case, six witnesses presented evidence at the inquiry, each with an associated proof of evidence. Mr Brunnen, the Head of Level Crossings (NR27) and Dr Algaard, the Director, Route safety and Asset Management (NR28) gave evidence in regard of Network Rail's national and regional strategic cases for the making of the Order. Mr Kenning, the Senior Project Engineer, Level Crossing Development Team (NR30), Mr Fisk, the Route Level Crossing Manager, Anglia Region (NR31) and Ms Tilbrook, a Project Director with Mott MacDonald (NR32) gave evidence regarding the development of the Scheme, the risk at each crossing and the effect the proposals would have on the PRow network (NR/27 – NR/32). Mr Billingsley, a Partner of Bruton Knowles Chartered Surveyors gave evidence regarding the acquisition of rights over land and compensation matters.

3.2 In addition, Network Rail's witnesses also submitted rebuttal evidence with regard to the proofs of evidence submitted by a number of individual objectors (NR28/4, NR29/4, NR30/4, NR31/4 and NR32/4). The material points made by Network Rail with regard to strategic matters were as follows.

#### **SOM1: The aims and the need for the proposed Network Rail (Essex and Others Level Crossing Reduction) Order Scheme ("the Scheme")**

3.3 The activities of Network Rail are regulated by the Office of Rail and Road ('ORR') and by the Secretary of State under the Railways Act 1993 by virtue of its Network Licence dated 1 April 2014. As the operator and owner of the national rail infrastructure, Network Rail has a key role to play in railway safety and improving railway performance and efficiency. The Licence is a primary instrument through which ORR holds Network Rail to account, and Network Rail must comply with it in all respects.

3.4 The Licence includes the responsibility for managing safety on the network which extends to overseeing safety matters relating to its staff, contractors, train and station operators; those who come onto railway land or property, either as a private individual or a member of the public. The use of any level crossing is necessarily encompassed within this global responsibility.

3.5 Network Rail is under a duty (that is ultimately regulated and enforceable by ORR) to operate the rail network efficiently and safely, so far as is reasonably practical, and having due regard to all relevant circumstances, as well as to satisfy more generally the core needs of train operators and of rail users. In so doing, Network Rail contributes towards the successful development of the Government's integrated transport policy.

3.6 The ORR's "*Strategy for regulation of health and safety risks – 4: Level crossings*" seeks to encourage crossing closure and states that the removal of crossings is always the first option to be considered in a risk control strategy. The ORR's "*Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19*" imposes a requirement to deliver

level crossing closures to maximise the reduction in risk of accidents at level crossings and provides funding for that purpose.

- 3.7 Network Rail's policy is to seek to eliminate traverses across the railway at grade, wherever possible. The reduction of the number of level crossings on the network is an important strategic priority, consistent with the regulatory duties. In "*Transforming Level Crossings 2015–2040*", Network Rail sets out a move away from reactive management of emerging single issues in isolation, in favour of a targeted strategic plan to improve safety.
- 3.8 Collectively, level crossings form the largest contributor to train accident risk on the railway network. There are broadly two groups of crossings: active crossings (where the user is warned of the approach of a train) and passive crossings (where no warning of train approach is given other than by the train driver who may use the train horn and the onus is on the crossing user to determine whether it is safe to cross the line). In the 5-year period prior to 2017, there has been an average of 253 near misses with non-vehicular users reported per year. It is widely acknowledged that removing 'at grade' railway crossings is both the most effective way of reducing risk at level crossings, and the only way to eliminate the risk completely.
- 3.9 The application is made under s1 (read with s5) of the 1992 Act, 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.
- 3.10 Powers are sought to reduce, and to rationalise the level crossing estate across the Anglia route, by diverting, extinguishing and downgrading rights of way currently enjoyed at 57 crossings within Essex, Hertfordshire, Thurrock, Southend-on-Sea, and the London Borough of Havering.
- 3.11 There are 771 level crossings in the Anglia region with 203 crossings in the highway authority areas covered by this Order, being Essex, Havering, Thurrock, Hertfordshire, and Southend. The management of level crossings in the region represents a significant staffing and maintenance cost. There are 14 Level Crossing Managers (LCM) within the region with each LCM being responsible for an average of 61 crossings.
- 3.12 The frequency of inspection varies by the type of level crossing, from a maximum inspection interval of 7 weeks for those crossings which are 'actively' managed to six-monthly inspections for 'passive' crossings.
- 3.13 The proposed reduction in crossing numbers could save one LCM post along with the costs of programmed inspection of crossings and the cost of periodic renewal of crossing infrastructure – currently estimated as £89,000 for a passive public footpath level crossing and £370,000 for the renewal of a user worked crossing with telephones (UWCT)<sup>9</sup>.

---

<sup>9</sup> NR26 Appendix D

- 3.14 Both 'passive' and 'active' crossings have an impact upon the operation of the railway. In the event of an incident at a crossing or where an inspection reveals that remedial works are required to be carried out, it may be necessary to caution or stop trains, which has an impact on performance and reliability. When track maintenance operations are required, it is necessary to temporarily close crossings to allow such work to proceed. The diversion of public rights of way to other grade-separated crossings would eliminate the need for temporary closures.
- 3.15 Temporary closure of crossings to address safety issues does not eliminate the risk posed by those crossings. The future strategy for level crossings, and the desire to reduce risks that cannot be eliminated, will lead to more technology being installed at passive level crossings. However, an increased level of warning equipment at level crossings leads to a railway which is more complex—and hence more expensive—to operate and maintain. There will be more signalling equipment to inspect, maintain and renew, and more failure points to investigate and rectify. As level crossings may share some technology, say for train detection, failures may impact on several level crossings simultaneously. Elimination rather than mitigation of the risk remains a preferred solution, in line with the ORR approach.
- 3.16 The anticipated cost of converting a passive footpath level crossing to automatic warning systems with MSLs is estimated at £300,000 per level crossing<sup>10</sup>. Temporary Speed Restrictions could be considered on those stretches of line where sighting is insufficient but would increase journey times for train users. Reported incidents at level crossings, or misuse of them, such as a gate being left open or a user not telephoning the signaller that the user has safely crossed can lead to trains being cautioned until it has been established that the crossing is clear. Such occurrences delay services and impact upon the efficiency of the railway. Sadly, fatalities also occur at crossings which cause the suspension of services until the incident has been investigated.
- 3.17 Network Rail is under a duty to run an efficient railway, and integrated MSLs and TSRs increase costs and impact upon service delivery. Level crossings present a significant risk to timetable resilience, where any asset failures or incidents can lead to train delays. The removal of these interface points through the rationalisation of the level crossing network would reduce the risk posed to an efficient and effective timetabled service.
- 3.18 Network Rail contend that a reduction in the number of level crossings across its estate would reduce the potential causes of disruption, lead to fewer risk assessments and fewer crossings requiring potential upgrades or closures to accommodate enhancements to the railway service in one of the fastest growing regions in the country.
- 3.19 The Anglia region of the railway has historically approached the closure of level crossings by prioritising the closure of those crossings with the highest risk ratings; this has often involved the construction of bridges and

---

<sup>10</sup> NR26 appendix D



compensation for any required land take. However, at the commencement of funding period CP5 (2014-2019) and with a renewed focus on trying to achieve further risk reduction at level crossings, Anglia region has developed a new approach to managing level crossings as the costs for overbridges is escalating<sup>11</sup> as is the cost of compensation to third parties.

3.20 The Anglia Crossing Reduction Strategy<sup>12</sup> (the Strategy) sets out a 5-phase approach to the reduction of crossings within the Anglia region.

Phase 1 – mainline level crossings that could be diverted and removed through the utilisation of existing nearby infrastructure and those that could be closed or downgraded due to extremely low usage;

Phase 2 – branch line level crossings that could be diverted and removed through the utilisation of existing nearby infrastructure and those that could be closed or downgraded due to extremely low usage

Phase 3 – non-vehicular level crossings closure of which requires new infrastructure for an alternative means of crossing the railway;

Phase 4 – vehicular level crossings requiring diversionary roads to existing infrastructure;

Phase 5 – vehicular level crossings requiring the construction of a vehicular bridge.

3.21 The individual crossings within the Scheme fall within phases 1, 2 and 4 of the Strategy which are being progressed initially as closure of those crossings can be implemented without the need for substantial infrastructure investment. The closure of those crossings which would require such infrastructure to be provided as part of a diversionary route would fall into phase 3 or phase 5 of the strategy and have not formed part of this Scheme. Closure of the crossings will result in increased resilience of the railway network and a reduction in the potential causes of disruption.

3.22 The Strategy has identified an opportunity to rationalise level crossings, and thereby improve the resilience of the network, improve user safety both for level crossing users and for rail staff and passengers. The Strategy seeks to deliver better value for money through identifying locations where existing infrastructure could be utilised in the first instance for alternative diversionary routes.

3.23 For the crossings identified in phases 1 and 2, the installation of costly new infrastructure, including bridges and underpasses, cannot be justified, when existing infrastructure can be utilised to deliver the same benefits at a fraction of the construction cost of new infrastructure. Whilst other schemes that utilise new technology to improve safety at level crossings will continue to be progressed, such an approach does not remove the safety risk or

---

<sup>11</sup> The new bridge at Slipe Lane in Hertfordshire has cost an estimated £3.5 million

<sup>12</sup> NR18

constraint on future growth on the network. The increased use of technology at those crossings which cannot be closed requires a cost outlay for installation and would represent an ongoing maintenance burden.

- 3.24 Network Rail's strategic case for rationalising the at-grade crossing points on the railway 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".
- 3.25 The benefits sought to be achieved<sup>13</sup>, through the Order, are 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.
- 3.26 Network Rail's case for the Scheme – and for the closure of crossings within the Scheme – is not based on any one of those objectives individually, but on a combination of those factors. Level crossings are but one part of the wider railway system. However, the crossings at issue have not been viewed in isolation (save in considering the merits of each proposal under s5(6) of the 1992 Act) but have been considered as part of the overall strategy towards level crossings which has been developed for the Anglia region.
- 3.27 Network Rail say that the crossings within the Order have not been selected based on the specific risk associated with that crossing; or on the basis that a specific enhancement scheme being 'held back' by the presence of that crossing; or in respect of the costs associated with maintaining any particular crossing.
- 3.28 The strategic case for the Scheme turns on benefits to the railway which will result from reducing the number of at-grade level crossings across the Anglia region: (a) enabling Network Rail to focus its resources on those at-grade crossings which cannot be closed by diversion<sup>14</sup>; (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); and (c) improving the reliability, and resilience, of the network.
- 3.29 The removal of each and every level crossing in the Scheme would also provide a safety benefit to those using the crossing and those travelling by train, remove a maintenance obligation, reduce costs, would make the route

---

<sup>13</sup> NR04

<sup>14</sup> NR28/1 Dr Algaard's evidence was that the funding required for inspection and maintenance of those crossings to be closed could be diverted towards the improvement of other crossings

safer and more reliable, and make the network more suitable, or more open, to future enhancement – in turn, contributing to the fulfilment of Network Rail’s Licence obligations.

- 3.30 In terms of current constraints on the operational railway, quite aside from the problems arising from a collision at a level crossing, these include (a) the ‘cautioning’ or stopping of trains in the event of misuse of the crossing - with consequent impacts for journey times and knock-on effects across the wider network; and (b) the imposition of TSRs where sighting at a crossing is insufficient to allow users sufficient time to cross the railway safely. These factors impact on journey times, operational efficiency and the resilience of the network. Level crossing infrastructure (specifically, the deck) also impacts on the ability to maintain the track over which it passes: and such maintenance work necessarily involves interfering with rights of way over the crossings whilst it is undertaken.
- 3.31 The reduction in the number of level crossings on the network is in line with the policy advanced by the ORR - the body principally responsible (with the Secretary of State and Scottish Ministers) for the regulation of the railway industry in Great Britain, and the Health and Safety regulator for the rail industry.
- 3.32 The ORR’s “Strategy for regulation of health and safety risks – 4: Level crossings”<sup>15</sup> states *“In particular, 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:”,* and *“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 (Management of Health and Safety at Work regulations 1999 Schedule 1) in European and UK law. The closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses, the legal arrangements for closing rights of way, the need to minimise the possible transfer of risk to other crossings, and the possibility of importing new dangers such as increasing the likelihood of trespass.”*
- 3.33 Within the funding period 2014-2019, the ORR noted<sup>16</sup> *“There will be extra funding to reduce the risk at level crossings, for example by enabling the closure of more crossings.”* And *“Network Rail is required to deliver projects (including level crossing closures), to maximise the reduction in risk of accidents at level crossings”.*
- 3.34 These approaches are reflected in the long-term strategy for improving level crossing safety in Great Britain as set out in *‘Transforming Level Crossings 2015-2040: A vision-led long-term strategy to improve level crossing safety at level crossings on Great Britain’s Railways’*<sup>17</sup> which states that *“closing*

---

<sup>15</sup> NR14 and NR27/1 Mr Brunnen’s evidence

<sup>16</sup> NR27/1 p15 - 16

<sup>17</sup> NR17

*level crossings will always be the most preferable and best solution to manage safety*"<sup>18</sup>.

- 3.35 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.
- 3.36 It has been suggested by a number of objectors that a particular crossing identified in the Scheme was perfectly safe, or had been used without incident for years, or was perceived to benefit from good visibility, or that the ALCRM score for a particular crossing did not reflect the lack of historic incidents at that crossing. It was also put in cross-examination of Mr Kenning, that where a crossing was open it was 'safe enough' to be used.
- 3.37 This is an incorrect approach when considering the risks posed by level crossings, or the benefits which would flow from the scheme. All crossings carry a degree of risk and that risk is quantified through the ALCRM score calculated for each crossing. The absence of previous incidents at a crossing does not indicate that there would be no such incidents in the future and that there is no risk at the crossing. Mr Brunnen's evidence was that between 2015 and 2017 there had been 7 fatalities at crossings where there had not previously been such incidents. The Scheme was pro-active in relation to addressing the risks posed by at-grade crossings and was consistent with *Transforming Level Crossings*.
- 3.38 The Scheme would result in the Fatalities and Weighted Injuries (FWI) value for the whole of the Anglia region falling. The positive outcome arising from the Scheme is not seriously challenged by the objectors. To the extent that they consider a safety case has not been made out for any particular crossing, that is not the approach to be taken with this Scheme.
- 3.39 The 203 crossings in the Scheme area imposes significant operational costs 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.
- 3.40 Dr Algaard's evidence was that closure of crossings in the Scheme would provide a saving of £18,770,400 in asset inspections and general maintenance over a 30-year period with an additional saving of £11,491,960 on renewals which would otherwise be required over that same period. If the crossings were to remain open Network Rail would incur a minimum capital cost of £25,056,760 over a 30-year period<sup>19</sup> to upgrade these 'passive' crossings and make them 'active' in line with the '*Transforming Level Crossings*' strategy. These figures take no account of the increased inspection/maintenance costs which would result from a passive crossing becoming an active crossing.

---

<sup>18</sup> NR17 page 3

<sup>19</sup> NR 106 and NR 126

- 3.41 Network Rail's obligations to spend public money wisely is not dependent on the outcome of a cost benefit analysis and no evidence to this effect has been adduced. Nor does the closure of any individual crossing within the Order depend on the cost of closure being less than the cost of alternative action at the crossing. As set out in the Strategy (NR18) phases 1 and 2 of the Strategy are pursued on the basis that the "*overall cost is equal to or less than the risk reduction cost*". CP6 base costs for installation and renewal of technology at passive crossings<sup>20</sup> has been put forward as has the likely magnitude of those costs for the crossings in the Order taken as a whole<sup>21</sup>. The Estimate of Costs<sup>22</sup> sets out the estimated costs associated with the Order. Although these are estimates as at March 2017 which are likely to have increased, they are of an order of magnitude below those associated with the alternative 'risk reduction' options<sup>23</sup>.
- 3.42 As a public company, Network Rail is under an obligation to manage public money effectively. The closure of the crossings in the Scheme and the cost savings which would flow is wholly in accordance with spending public money wisely. The closure of the crossings in the Scheme would remove the risk posed by the crossings forever.
- 3.43 Whereas some parties have argued that the Scheme seeks to shift the burden of maintenance of public access from Network Rail to other public bodies, the increased burden which would accrue to highway authorities as a result of the Scheme has been recognised by way of agreement for commuted sums to be paid to those authorities, such as the agreement made with ECC<sup>24</sup>.
- 3.44 Cost is, however, only one part of the equation. Level crossings pose a very real constraint on the operational efficiency and reliability of the current network – even leaving aside future improvement or enhancement schemes. 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 with potential upgrades to the network and can affect signalling operations.
- 3.45 It is not possible to forecast which crossings or the infrastructure at them will fail on any given day, but the 'ripple' effects can be extensive<sup>25</sup> with consequential delays for train services and passengers. The imposition of TSRs as mitigation to allow pedestrians sufficient time to cross the rails also impacts upon train services and schedules and are contrary to the Licence under which the railway is operated. The removal of the crossings from the railway would lessen the risk to effective and efficient timetabled services.

---

<sup>20</sup> NR26 Appendix D

<sup>21</sup> NR 126

<sup>22</sup> NR07

<sup>23</sup> NR 126

<sup>24</sup> NR 103

<sup>25</sup> NR 158

3.46 The objectors made submissions as to the case for the closure of individual crossings and how those individual crossings would impact upon the network. However, in terms of the overall Scheme, a view should be taken as to the impact at a 'system' or 'strategic' level.

*Level crossings are a constraint to enhancement of the network*

3.47 There are three principal rail lines within the Anglia region, the Great Eastern Main Line (London to Norwich), the West Anglia Main Line (London to Cambridge and Stansted) and Essex Thameside (serving Southend Airport). There is an aspiration to run services to Norwich in 90 minutes; the West Anglia Mainline is identified in the Anglia Level Crossing Reduction Strategy as one identified for capacity enhancements during CP5.

3.48 It was Mr Kenning's evidence that for line speed enhancements to be made, the impact of increased speed on each crossing had to be assessed which may require the use of technology or the construction of a bridge or underpass to mitigate any increase in risk. Such enhancements would fall to be funded by the promoter of the scheme, who may not proceed due to the additional cost.

3.49 There was also a considerable lead-in time with regard to the delivery of any enhancement proposal. Although many factors may be under Network Rail's control, the ability to close crossings and divert any PROW over them involved the input of third parties and closure could not be guaranteed. This Scheme is considered to enable the potential of the network to accommodate future enhancement and upgrades by removing some of the constraints placed on the region's railways by the crossings.

3.50 It is not suggested or claimed that any of the crossings in the Scheme is preventing a specific enhancement scheme from coming forward. Rather, there is a case that removing these crossings from the railway network would remove constraints which would otherwise have to be addressed if or when a proposed enhancement scheme was to come forward.

3.51 The closure of level crossings as part of any enhancement scheme would not address the issues of cost and timing. It would not provide the certainty needed as to which assets required addressing, either by 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).

3.52 Addressing the issue of crossings on a piecemeal basis as part of projected enhancement schemes would not meet the strategic objectives sought through this Scheme. Nor would it be consistent with the conditions set out in Part III of the Licence which require Network Rail to demonstrate 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<sup>26</sup>.

#### *Branch lines*

- 3.53 The proposal to close crossings on branch lines is entirely consistent with the strategic aims of the Scheme. Crossings on branch lines are not risk free and the risk to both users of the crossing and the railway is not eliminated because trains run at speeds of 75mph or less. Similarly, the installation of technology at branch line crossings would not eliminate the risk. The inspection and maintenance regime for crossings on branch lines is exactly the same as that carried out on main lines.
- 3.54 In respect of resilience and reliability, Mr Kenning's evidence was that an incident on a branch line did not mean that there would not be a ripple or radiating impact on main line services; the Braintree branch line carried services directly to Liverpool Street and an incident on that line may lead to disruption on other parts of the network. In cross-examination, he accepted that due to the lower frequency of trains on the branch lines in question, the impact was likely to be of a lesser extent than a failure or incident on the mainline.
- 3.55 The aspiration to improve and enhance services on branch lines is reflected in '*Once in a generation – A rail prospectus for East Anglia*<sup>27</sup>', a document authored by a 'multi-agency alliance' of key stakeholders in the region including ECC which puts forward a case for a "feasible programme of improvements" up to 2032. The principle of seeking to remove constraints, pro-actively, as a potential catalyst to future development applies equally to branch lines as it does to mainlines.
- 3.56 Whilst a number of parties have therefore questioned the 'case' for closure of individual crossings on branch lines by virtue of that crossing being on a low speed line, and/or with a low ALCRM score and/or without there being a clear enhancement scheme in the immediate future, Network Rail maintains that once the strategic case for the Order is accepted, it is clear that strategic case applies equally to those crossings located on branch lines as it does to those on main lines.

#### *National Strategy*

- 3.57 Network Rail has adopted a strategy for level crossings which includes a process of reducing the number of crossings in '*Transforming Level Crossings 2015-2040*'<sup>28</sup>. 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

---

<sup>26</sup> NR27/1 paragraphs 4.8 – 4.9

<sup>27</sup> NR 132 page 26

<sup>28</sup> NR17

avoid a management culture of constant fire-fighting, waste, duplication of effort and suboptimal solutions not aligned to a wider business strategy”<sup>29</sup>.

- 3.58 Mr Brunnen noted that the ORR had placed a requirement on network Rail to seek a further 25% reduction in risk at level crossings during CP5 (2014 – 2019) following a similar reduction in CP4. The national strategy accords with this current requirement. The ORR has made a specific, ring-fenced fund, of £99m available to NR for that purpose.
- 3.59 The Scheme seeks 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. It is also distinct from ongoing work to improve the safety of retained crossings –and through the wider objective of phasing out ‘passive’ crossings by 2040.
- 3.60 ORR is aware of, and supportive of, the approach being taken by this Scheme, and has approved the use of part of the ring-fenced funding on the Scheme although benefits may not be realised within CP5. The Scheme seeks 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*

- 3.61 The Anglia CP5 Level Crossing Risk Reduction Strategy<sup>30</sup> 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).
- 3.62 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”<sup>31</sup>. It identifies the difficulties which exist in utilising other processes for seeking to remove level crossings from the network and identifies that the TWAO process enables the wider strategic benefits which result from removing level crossings from the network to be brought into the picture.
- 3.63 The Strategy sets out a phased approach to level crossing closure. Phases 1 (mainline) and 2 (branch line) seek closure of those crossings “that have a nearby alternative route utilising existing bridges as a means of crossing the railway and those that could be closed or downgraded due to extremely low usage”<sup>32</sup>. Phase 4 of the strategy included the downgrading of roads and “user worked crossings where an alternative means of access has been identified and needs powers to enforce the provision of access”. Phases 3

---

<sup>29</sup> NR17 – page 6

<sup>30</sup> NR18

<sup>31</sup> NR18 page 5

<sup>32</sup> NR18 page 9



(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. These are identified as ‘No change’ crossings.

- 3.64 The Strategy notes that if a crossing is not assessed as suitable for one phase, it will be moved into a later phase, and that “each 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”<sup>33</sup>.
- 3.65 Appendix B to the Strategy sought to provide an overview of where the crossings within Anglia might fit into the phased approach. Mr Kenning explained that this was a desk-based exercise, listing all the level crossings within Anglia region, and highlighting where it was thought crossings might fall into a certain phase. It represents the state of play as at March 2015 but was not determinative of which crossings were to be put forward for consideration as part of this Scheme.
- 3.66 At various points in the development of the Scheme, crossings which had initially been considered suitable for Phase 1 and Phase 2 were amended or removed following more detailed assessment work and feedback from public consultation.
- 3.67 In summary: the removal of each and every level crossing within the Scheme, whether on a main or branch line will provide a safety benefit to both crossing users and railway staff and passengers, remove a maintenance obligation, reduce costs, will make the Anglia route more reliable, and make the network more suitable, or more open, to future enhancement.

*Network Rail’s response to other parties’ submissions on strategic matters*

- 3.68 The principles underlying the Strategy were broadly in line with ECC’s long-term transport strategy and stated aim to improve connectivity and economic growth. Where ECC takes issue with particular crossings within the Order, it is because ECC considers that the closure would have significant negative impacts on the PROW network, or Network Rail’s proposed alternative route is not considered appropriate. When calling its ‘strategic’ evidence at the inquiry, ECC characterised its position on the strategic case for the Order as one of “neutrality”.
- 3.69 *Colchester Borough Council’s* objections to the ‘strategic’ case are centred on its objection to the inclusion of branch line crossings to which they have objected. The strategic case being advanced however applies equally to branch lines as it does to main lines.

---

<sup>33</sup> NR18 page 11

- 3.70 The *Ramblers* primarily object to the use of the TWAO process to effect the closure of level crossings and the diversion or extinguishment of the public rights of way which traverse them. However, the Scheme is clearly '*ancillary to the operation of a railway*' and falls squarely under the provisions of section 1 of the 1992 Act. Further, the objectives of the Scheme are not ones which can be provided for under the provisions of the 1980 Act. It is submitted that there is simply no basis for concluding that a TWAO is not an appropriate, and lawful, means of seeking to effect the objects of the Scheme.
- 3.71 In addition, the *Ramblers* consider that there is a lack of detail with regard to what will be provided on the ground as part of each proposed diversion, and that such detail was required at this stage to be able to assess whether the alternative routes were 'suitable and convenient'.
- 3.72 However, what is sought under the TWAO process is approval 'in principle' with the detailed design being developed at a later stage. Whether the alternative route developed is considered suitable for public use is a matter for the highway authority to determine; Article 13 of the Order provides for the necessary certification regime.
- 3.73 The *National Farmers Union* (NFU) made a number of objections with regard to specific members whose lands were affected by the Scheme but did not make specific comments on the strategic matters which underpin the Scheme. The dispute between the NFU and Network Rail appeared to be in where the balance should be struck between the interests of the landowner and other competing interests.
- 3.74 The *ELAF* also challenge the use of the TWAO process as opposed to seeking closure through separate applications under the 1980 Act; this issue has been addressed in respect of the submissions made by the *Ramblers*.
- 3.75 *ELAF* also contended that the Scheme did not comply with the objectives set out in '*Transforming Level Crossings*' as the majority of crossings in the Scheme are not on high speed lines, have high usage or a large number of trains, and are not proposing to make any of the passive crossings active. Mr Brunnen's evidence was that the Scheme proposals were consistent with the objectives of *Transforming Level Crossings* and that the Scheme has the support of the ORR.
- 3.76 *ELAF* have also raised concerns that Network Rail have not considered the proposed closures of level crossings "holistically". However, the very purpose of phases 1 and 2 of the Strategy was to identify where there were opportunities to divert users to an alternative crossing point of the railway. This has necessarily involved consideration of how the crossings in the Order relate to, and operate alongside, other crossing points on the same stretch of line – and within the wider PROW network in the area. It is clear from the evidence given by both Mr Kenning and Ms Tilbrook how this has been considered in any given case.

- 3.77 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.
- 3.78 In order to operate a 21st century railway, capable of delivering the growth sought both nationally and within the Anglia region, Network Rail states that it needs to address the issues presented by level crossings. This is particularly the case within Anglia, which, when the application was made, had 771 level crossings, with a total FWI of 2.95 - which is 25% of the overall national level crossing risk.
- 3.79 Network Rail believes that the detail of the Order scheme has been carefully developed and that the Order proposals have been carefully appraised, and subject to extensive consultation.
- 3.80 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 powers sought by the Order. 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.

### **The Case for the Ramblers (OBJ 148)**

- 3.81 In support of its case, ten witnesses presented evidence at the inquiry, each with an associated proof of evidence. Mr de Moor spoke in regard of strategic matters (OBJ 148/18); Mr Russell of Motion Transport was called in respect of highway design and safety matters (OBJ 148/19) and eight witnesses, Mr Bird; Mr Glass; Mr Goffee; Mr Naylor; Mr Coe; Ms Hobby; Mr Evans and Mrs Evans<sup>34</sup> gave evidence in regard of individual crossings and the PROWs associated with those crossings.
- 3.82 In addition, the Ramblers also submitted rebuttal evidence with regard to the proofs of evidence submitted by Network Rail (OBJ 148 R1 – R5). The material points made by the Ramblers in relation to strategic matters were as follows.
- 3.83 The Ramblers submit that Network Rail's "strategic case" does not provide a sufficiently robust methodology for how level crossing closures should be determined. From the evidence of Dr Algaard, it is quite clear that Network Rail would want to close all level crossings if that were possible. Network Rail rely on three key "strategic" reasons to seek closure of level crossings: (i) to improve safety on Network Rail's network; (ii) to reduce the ongoing costs associated with the maintenance of level crossings; and, (iii) to better enable operational efficiency improvements.
- 3.84 The Ramblers do not dispute that all level crossings have an inherent safety risk and that that risk can only be "eliminated" if the level crossing is closed. Nor is it disputed that closing a level crossing will reduce ongoing

---

<sup>34</sup> OBJ 148 W-001 to 017 & OBJ 148 W-020 to 035

maintenance costs and in general terms could assist in increasing operational efficiency.

- 3.85 However, Network Rail accepts that those three “strategic” reasons, taken alone, cannot justify the closure of a level crossing, otherwise all level crossings could be closed without any further consideration. What is required is a ‘balancing act’ whereby the reasons in favour of closing level crossings can be weighed against the reasons for keeping the crossings open. Each level crossing is “unique” in that the purposes it serves, and the nature of use will vary from crossing to crossing.
- 3.86 Once it is accepted that a balancing exercise is required that factors in the wider community’s interest, as well as the interests of Network Rail, the crucial question then becomes: how did Network Rail carry out this balancing exercise in selecting which crossings to close through this Order? The Ramblers do not consider that the wider community’s interests have been sufficiently weighed into the balancing exercise carried out by Network Rail.
- 3.87 Network Rail is required under the terms of its License, under the National Policy Statement for National Networks 2014, the Rail Safety Directive 2004 and under the directions of the ORR to operate a safe and efficient railway. In cross-examination Mr Brunnen accepted that Network Rail’s operating licence imposed no absolute duty on Network Rail to maintain the railway as safe as is possible, but a qualified duty to maintain safety on the railway to the greatest extent which was reasonably practicable in all the circumstances.
- 3.88 Although it is acknowledged that the ORR makes clear that whilst crossing closure is encouraged and should always be considered first in any risk assessment, paragraph 6 of the ORR’s “Strategy for regulation of health and safety risks 4: Level Crossings”<sup>35</sup> recognises that *“the closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses, the legal arrangements for closing rights of way, the need to minimise the possible transfer of risk to other crossings, and the possibilities of importing new dangers such as increasing the likelihood of trespass”*.
- 3.89 The Ramblers consider that the strategy developed by Network Rail to effect the closure of level crossings is one of its own making and is an entirely new approach set in the context of the qualified requirements of its License and the regulatory regime in which it operates.
- 3.90 The key document in this new approach is the Anglia CP5 Level Crossing Reduction Strategy<sup>36</sup>. The strategy was prepared for the whole Anglia region, with individual Route Requirement Documents (“RRDs”) having been provided for specific parts of the Anglia Route. It is evident that the Strategy was written by Network Rail for Network Rail with a starting point

---

<sup>35</sup> NR14

<sup>36</sup> NR18

being that level crossings posed a safety risk and should be removed where possible. Mr Kenning agreed that it had been written from Network Rail's perspective.

- 3.91 Justification for the use of the TWAO process was said to be<sup>37</sup> that "*we can argue using the greater public benefit of improved rail services*". The Ramblers are concerned with any indication of a "Network Rail-centred" approach because of what Network Rail is proposing. Network Rail is arguing that it has, itself, carried out the balancing act and considered all interests that may be affected by closure of a level crossing; Network Rail consider that they have correctly struck the balance between the impact of its proposals on landowners, the public, the Highway Authority and itself. The Ramblers contend that Network Rail has not and could not, get the balance right.
- 3.92 Network Rail appears to put forward a two-stage strategy, firstly by rationalising the level crossing estate – by closing level crossings either through extinguishing public or private rights of way or simply diverting them to alternative existing means of crossing the railway. The second stage is to install infrastructure (bridges or underpasses) to replace the remaining level crossings. The order only addresses the 'rationalisation' stage (Phases 1, 2 and 4); in cross-examination, Mr Kenning could give no guarantee that phases 3 and 5 would be implemented. It is quite possible – were the Order to be made – that there would only be rationalisation.
- 3.93 It was far from clear how Network Rail had determined which crossings in the Anglia region would fall into phases 1, 2 or 4. Some crossings had already been completely excluded from the strategy at the time the Strategy was written<sup>38</sup>. It is not clear as to the evidence on which Network Rail rely to determine which crossings were "clearly...unused or have extremely little use"<sup>39</sup>. Other crossings would be included as part of the Scheme due to there being a "nearby alternative route".
- 3.94 This "nearby alternative route" test is crucial to Network Rail's entire case. Unless a crossing falls into the (i) Appendix D category or the (ii) "clearly unused" category, the initial "short-listing" decision for determining if it would be taken forward as a proposal for closure in this stage of the project, rested on whether Network Rail thought there was a "nearby alternative route".
- 3.95 The Ramblers submit that such a consideration does not take into account factors such as who uses the crossing, how many people use it or what they use it for. It does not consider the relative safety risks at that crossing and weigh that against the use of the public rights that traverse it. It does not consider the safety risks at the crossing and weigh that against the safety risks of the alternative route, nor does it consider the relative costs of possible mitigation measures against current levels or future levels of use.

---

<sup>37</sup> NR18 paragraph 1.1.1

<sup>38</sup> NR18 Appendix D

<sup>39</sup> NR18 at 2.1.2.1 and 2.1.2.2

- 3.96 In cross-examination, Mr Kenning agreed that the strategic methodology could give rise to a crossing being included in the Scheme where that level crossing had the following characteristics: (i) a low ALCRM score; (ii) no need of any upgrade in the next 10 years; (iii) no direct relationship to any enhancement scheme; (iv) high community value in terms of the level of usage; and, (v) where the alternative route diverted users alongside a road that whilst deemed be "safe enough" for use by pedestrians was, in fact, more risky to users than the level crossing.
- 3.97 Network Rail's selection process appears to have been that if a suitable and convenient alternative route was considered to be available, a crossing could be included for closure in the Scheme. The Ramblers do not consider this to be a robust methodology for deciding whether or not to close a level crossing. It is inappropriate for Network Rail to apply such a blanket assessment of the case for closure by reference to whether or not there is an "*alternative route nearby*".
- 3.98 In fact it is worth contrasting this new approach to what would need to be considered for a crossing extinguishment or diversion order under s118A or s119A of the 1980 Act which requires that at the application stage<sup>40</sup>, consideration needs to be given to the factors which the Ramblers have raised concerns about and which should have been taken into consideration in designing the Scheme.
- 3.99 The factors identified in Schedule 1 of the 1993 Regulations is a further example of the carefully structured specific statutory scheme that is designed to accommodate the need to close level crossings. The fact that Network Rail is pursuing a scheme that avoids the need to fully consider these factors is a further indicator that this is an inappropriate use of the provisions found in the 1992 Act.
- 3.100 The Ramblers contend that there has been a failure to balance the wider community's needs against those of Network Rail in developing the Scheme. The consulting engineers were not contracted to assess the underlying strategic case for the Scheme, but only to assess whether the suggested alternative routes were suitable and convenient. In the two rounds of public consultation, the public were not consulted about whether a particular crossing should be closed, only on whether the proposed alternative routes were 'suitable or convenient'<sup>41</sup>. Any suggestion by the public that a crossing could be enhanced to maintain or improve its current function was not addressed.
- 3.101 The Ramblers consider this to be an important omission. It is one thing for the public to say: "*if* the crossing has to be closed, then this alternative route may be acceptable". It is quite another for the public to say, "this

---

<sup>40</sup> Schedule 1 of the Rail Crossing Extinguishment and Diversion Orders Regulations 1993

<sup>41</sup> In cross examination on E41 Paget, Mr Kenning noted that feedback which required the crossing to remain open was 'contrary to what we were consulting on'.

crossing can be closed *because* the alternative route is acceptable". The former question may have been consulted on, but the latter was not.

- 3.102 A further complication as regards the "strategic case" for closure, is that there is a clear disjunct between the "strategic" benefits which Network Rail sought to rely on to justify the closure of all level crossings and the crossing-specific objections which a number of objectors raised in relation to the closure of one particular crossing.
- 3.103 The Ramblers were certainly not alone in presenting evidence at the inquiry on a particular level crossing's safety risks or that level crossing's past record of impacts (or expected future impacts) on the operational network. It is not immediately apparent how such crossing-specific evidence can be weighed against Network Rail's strategic case for closure of level crossings.
- 3.104 A recurring criticism of Network Rail's approach is its failure through this Order to compare and consider (i) the safety risks associated with a level crossing with (ii) the safety risks associated with the proposed diversion for that level crossing (in particular, where that diversion would require users to walk alongside a road or its verge).
- 3.105 It is common ground that there is no recognised "comparator" or model through which these two types of safety risk can be compared. However, what is utterly lacking from Network Rail's strategic approach, is any evaluative/qualitative assessment that considers whether a proposal will – on balance – be more or less safe from the user's perspective. For an Order that has, as one of its three key underlying objectives, the reduction of safety risk, this is baffling.
- 3.106 The Ramblers submit that this issue was not addressed by Network Rail's witnesses. Mr Brunnen could speak to safety risk at level crossings and to that alone. However, Mott MacDonald had been tasked to simply consider highway safety issues and Ms Tilbrook was clear that they had not carried out any comparison between the risks to pedestrians crossing the railway or using the road network.
- 3.107 The Ramblers believe that Network Rail took a drastically different approach to the assessment of risk on its own rail network and the assessment of risk on the highway network. Many of the arguments being put forward to support the safety case to close a level crossing (the total elimination of risk, the lack of incidents not being a guarantee that there would be no future incidents) can be equally applied to use of the road network. The Ramblers are concerned that the result of many of the proposals contained in the Scheme will be to increase safety risks for pedestrians, albeit that these risks will be transferred elsewhere and would no longer need to be managed by Network Rail.
- 3.108 The Ramblers submit that Network Rail's strategic case and overarching methodology for choosing which crossings to close is not robust. Competing interests – for and against the case for closure – have not been sufficiently balanced and assessed in the decision-making process and the wider

community's interests in maintaining the points of access over the level crossings has not been sufficiently considered.

- 3.109 The Ramblers fully accept that the inquiry process is not a judicial review of Network Rail's decision to close level crossings. However, its concerns relating to Network Rail's decision-making process are relevant because Network Rail has chosen to use a standardised methodology for selecting which crossings to close.
- 3.110 If Network Rail seeks to apply such a standardised methodology to the closure of over 100 level crossings (including those in the Suffolk and Cambridgeshire parts of the Anglia region), and if there is a potential for this new methodology to set a precedent, then that methodology – in other words, the decision-making procedure – needs to be scrutinised.

### **The Case for Essex County Council (OBJ 195)**

- 3.111 In support of its case, six witnesses presented evidence at the inquiry, each with an associated proof of evidence. Dr Southgate, ECC Transport Strategy Manager (OBJ 195 W1) and Miss Baker, Definitive map and Records Officer (OBJ 195 W2) and Mr Cubbin, Road Safety Strategy Analyst (OBJ 195 W7, spoke with regard to strategic matters. Mr Lee, Public Rights of Way and Records Analyst (OBJ 195 W3), Mr Corbyn and Mr Seager, both Road Safety Engineers (OBJ 195 W5) gave evidence in relation to those crossing to which ECC objected.
- 3.112 In addition, ECC's witnesses also submitted rebuttal evidence with regard to the proofs of evidence submitted by Network Rail (OBJ 195 R1 – R3). The material points raised by ECC in relation to strategic matters were as follows.
- 3.113 ECC has been working with Network Rail and a variety of local partners over a number of years led by the Great Eastern Mainline Taskforce and West Anglia Mainline Taskforce to build the case for investment in significantly increased rail capacity to provide the more frequent services, reduced journey times and a much improved journey experience for all rail passengers necessary to connect people and places in Essex to each other and the rest of the world, to support sustainable economic growth throughout Essex and provide access to employment, education and training.
- 3.114 The principles underlying the Anglia Level Crossing Reduction Strategy are therefore broadly in line with ECC's long term transport strategy and stated aim to improve connectivity and support economic growth. However, ECC also has a responsibility to protect and maintain public rights of way, and the entire highways network, ensuring that it is accessible and safe for the many users of the network.
- 3.115 The PROW network provides invaluable local transport links and use of the network provides proven health benefits and improved life expectancy. The network is also a valuable contributor to the local economy providing access



to our countryside, our coastline and our heritage, and our communities benefit from the connections provided by the network.

- 3.116 ECC therefore has had to balance the different responsibilities it has; accepting that there are locations where closure of a level crossing may benefit our strategic aims, but noting that there are also locations where the level crossing has a value to the local community or local economy that outweighs any potential strategic benefit for rail services.
- 3.117 ECC is objecting to the closure of level crossings at locations where the closure of the level crossing has significant negative impacts on the PROW network or on the local community and where Network Rail's proposed alternative is not considered to be appropriate.
- 3.118 ECC also needs to ensure that the proposed crossing closures do not simply pass risk and cost from Network Rail to ECC. Agreement has reached with regard to commuted sums to cover future maintenance costs should the order be approved but ECC maintains its objection to the closure of seven crossings within its area.
- 3.119 Network Rail's strategic case for the making of the Order is based on three principles: (a) operational efficiency of the network; (b) safety of rail users and those interacting with the railway; and (c) efficient use of public funds. ECC has no 'in principle' objection to the Order and makes no submissions about whether or not the 1992 Act route is the right process NR should be following to achieve its aims. However, concerns are expressed about the applicability of the strategic case being advanced in relation to those crossings to which ECC specifically objects.
- 3.120 Dr Algaard's evidence on behalf of Network Rail was that by reducing the number of crossings on the network, greater resilience could be gained which would allow more and faster trains to be run as the 'ripple' effect<sup>42</sup> caused by an incident at a crossing could be reduced. In addition, Network Rail's Client Requirement Document<sup>43</sup> provided information on several Anglia Route enhancement schemes to increase capacity, speed and length of trains across the network. The document itself states that "*level crossings are a limiting factor in some or all of these schemes and there needs to be a holistic approach to the management of level crossings*".
- 3.121 ECC considered that there was a case to be made for level crossing closure to improve operational efficiency. ECC's Transport Strategy Manager, Dr Southgate had been directly involved in several of the projects listed in the Client Requirement Document and in cross examination accepted that closure of level crossings as part of a coherent project, or 'package' to achieve improvements to service or line speed would be justified, and that closure linked to the projects identified in the Client Requirement Document made sense.

---

<sup>42</sup> NR 158 Mr Kennings paper on consequential and radiating delays

<sup>43</sup> NR18

- 3.122 However, Dr Southgate also noted that the crossings to which ECC objected did not form part of any project listed in the Client Requirement Document and Network Rail have not been able to provide details of any enhancements or improvements that directly involved these crossings.
- 3.123 ECC note that although Mr Kenning provided evidence of the 'ripple effect' caused by incidents at specific crossings, he was unable to provide any examples of the 'ripple effect' having arisen directly from the crossings to which ECC objects. It is clear that the closure of these 7 crossings will not give rise to increased line speeds, it will not give rise to an increase in the number of trains on these lines, and it will not have a quantifiable effect to reduce delays caused by the 'ripple effect'.
- 3.124 In respect of the 7 crossings to which the ECC has raised objections, the operational efficiency case advanced by Network Rail is not applicable.
- 3.125 The ALCRM was described by Mr Brunnen as a "*complex risk calculation model used to assess quantitative risk at level crossings consistently and accurately*"<sup>44</sup> and is said to be recognised by the ORR as the level crossing risk ranking tool for all level crossings. The ORR's strategy document on the regulation of Health and Safety Risks at level crossings promotes consideration of closure first in line with the principles of prevention and prioritising those crossings that present the highest risk<sup>45</sup>.
- 3.126 Under ALCRM risk scores are presented on an alphabetical and numeric scale to represent individual and collective risk of fatality with A and 1 representing the highest risk and M and 13 representing the lowest. The proposed closure of the 7 crossings to which ECC objects are not those that present the highest risk.
- 3.127 Furthermore, in each of the proposed alternative routes, users of the crossings would be diverted onto existing vehicular carriageways; it was acknowledged by both Mr Brunnen and Ms Tilbrook that there was a risk of incidents occurring between pedestrians and vehicular traffic and that increased footfall on such roads would increase the risk faced by pedestrians.
- 3.128 Mr Cubbin gave evidence that there had been 185 fatalities on the highway network between 2013 and 2018, whereas in NR/26, 9 fatalities were recorded on the Anglia route between 2013 and 2017; there are more deaths on the public carriageway network than on the railway and the logical conclusion being drawn is that the statistical risk to life is greater on the roads.
- 3.129 In addition, Mr Cubbin's evidence was that "B and C classified roads have the highest severity ratio"; that "A roads have the greatest number of killed or seriously injured per kilometre of road"; and that "unclassified roads account for the greatest number of casualties".

---

<sup>44</sup> Mr Brunnen in oral evidence

<sup>45</sup> NR18

- 3.130 Given that the 7 crossings to which ECC objects are not the highest risk, ECC submits that the elimination of risk on the railway is disproportionate to the transfer of that risk to the road where familiarity and distraction are also present and ultimately the risk of conflict for the individual user is greater.
- 3.131 Both Dr Algaard and Mr Brunnen considered that the Order provided for the effective use of public funds. Network Rail submitted that the elimination of a level crossing would create a saving in maintenance burden and Dr Algaard explained that this saving could then be used for other purposes, such as installation of technology on remaining crossings.
- 3.132 Whilst Mr Fisk's evidence contained cost benefit analysis calculations for the various options which could be considered to address the risk posed by each crossing, it was evident that an arbitrary sum of £50,000 had been applied to every crossing to cover the associated costs for the 'closure' option for the purposes of the cost benefit analysis. The true cost of the provision of the alternative routes would have an impact upon the outcome of any cost benefit analysis. The work undertaken by Network Rail did not take into account the costs arising from incidents between pedestrians and vehicles using the carriageway.
- 3.133 ECC submits that, in the absence of specific financial data relating to each individual crossing and the true cost of Network Rail's project, the Secretary of State does not have the necessary information to assess whether closure of the 7 crossings to which ECC objects represent a good use of public money. A saving by one public purse is not a saving if it transfers the costs from one public body to another.
- 3.134 It is ECC's case that an improvement in operational efficiency is not achieved by closing the crossings to which it objects, that the relatively low risks associated with these crossings do not justify closure particularly in consideration of the transference of risk onto the highway. Consequently, the only justification for closure would be that closure would represent a good use of public funds, however, only arbitrary figures have been submitted.

### **The Case for Colchester Borough Council (OBJ 141)**

- 3.135 CBC called the Transport and Sustainability Manager, Miss Forkin as its only witness. Miss Forkin (OBJ 141/1) had replaced Mr Wilkinson and adopted the evidence Mr Wilkinson had provided on behalf of CBC.
- 3.136 The threefold justification for the strategic case advanced by Network Rail, namely (a) operational efficiency, (b) safety of both rail users and those interacting with it, and (c) the efficient use of public funds is recognised by Colchester Borough Council (CBC).
- 3.137 However, from cross-examination of Network Rail's witnesses, Mr Brunnen and Dr Algaard, it was evident that the case for closing many of the crossings on safety grounds offered little weight in support of making the

Order. For many of the crossings the collective risk as identified under the FWI value was so minor as to be almost negligible<sup>46</sup>. Neither Mr Brunnen nor Dr Algaard could explain the weight or significance given to safety "gains" as part of the strategic case. CBC submits that the weight that may be reasonably afforded to safety benefits to Network Rail in closing the various crossings should be limited.

- 3.138 The case for closing the crossings on operational efficiency grounds are unclear; Network Rail has not produced any evidence of the specific operational "gains" that may (reasonably) be predicted to arise from closing each of the crossings contained within the Order. Whilst some evidence of the ripple effect arising from an incident on a mainline crossing has been submitted, there is no evidence of any such impacts having arisen from those crossings proposed for closure on branch lines to which CBC has objected.
- 3.139 In relation to E41, E51 and E52, it is evident that it is not a strategic priority, in the short to medium term, to increase either line capacity (i.e. numbers of trains) or line speeds on the branch line. This is confirmed in the Anglia Route Study<sup>47</sup>. Therefore, the premature closure of any crossing on the branch line will only serve to detriment the local footpath (and highway) network with no immediate operational efficiency gains accruing.
- 3.140 It is unclear how Network Rail have balanced the cost-benefit to itself/its passengers to the cost-benefit elsewhere (i.e. the public at large). CBC submit that this is a significant failing in the application. This is notwithstanding the loss of amenity that would arise from closing the various crossings. Furthermore, the cost-benefit analysis figures given for closing a number of crossings are by reference to a score; many of which fall in the band "reasonable" cost benefit (see, for instance E51 and E52). CBC submits that where the cost benefit is only reasonable (i.e. less than 1.0) and not "positive" (i.e. more than 1.0) then the Secretary of State may not be reasonably satisfied that there is a strategic case for the closure of these footpaths in the absence of either a compelling case on strategic grounds and/or operational efficiency grounds.
- 3.141 In summary, it is CBC's case that Network Rail's strategic case for closing crossings on branch lines is not as strong and, indeed, may be premature in the absence of a compelling case as to why closing crossings on branch lines will benefit both the rail network and the public transport system as a whole. CBC say that there is not a compelling strategic case for the closure of E41, E51 and E52 at the present time.

### **The Case for the National Farmers' Union (OBJ 034), Essex National Farmers Union (OBJ 084)**

---

<sup>46</sup> E51 Thornfield Wood has an FWI of 0.00000935 or a risk of 1 fatality in 1 million years

<sup>47</sup> NR24

- 3.142 The NFU was represented by Miss Staples, a Rural Chartered Surveyor. Miss Staples gave evidence with regard to the overall impact of the Scheme on her members' interests.
- 3.143 The primary concerns and issues of National Farmers' Union (NFU) members are that: (a) closure of level crossings will compromise access to agricultural land by farm businesses, their employees and contractors; (b) the economic impact on farm businesses, caused by the proposed closures to the crossings, has currently been completely underestimated; (c) the proposals would 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 and future opportunities for land use, or the development of neighbouring property may be restricted; (e) other solutions could and should have been considered prior to closure or downgrading of level crossings, such solutions could have included the use of lights, barriers, GPS, tunnels and bridges; (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 farm businesses, their contractors, rural villages and roads – there is no evidence that this has been taken into consideration.
- 3.144 Greater consideration should have been given to farmer and landowner responses to consultations instigated by Network Rail and to points made in meetings when on site. Only through this full engagement can compromise arrangements be made to improve Network Rail's assets whilst not disadvantaging agricultural businesses and rural communities.
- 3.145 NFU contends that the absence of meaningful consultation with farmers and landowners, and the lack of any agreement to the proposals put forward by Network Rail are reasons for the Order not to be granted.

### **The Case for the Essex Local Access Forum (ELAF) (OBJ 142)**

- 3.146 ELAF was represented at the inquiry by its Chair, Mrs Evans and by one of its members, Mrs Dobson. Both witnesses provided a proof of evidence (OBJ 142/1 and OBJ 142/2). In addition, rebuttal evidence with regard to the proofs of evidence submitted by Network Rail (OBJ 142/R) was also submitted. The material points raised by ELAF in relation to strategic matters were as follows.
- 3.147 On page 2 of *Transforming Level Crossings Strategy 2015 - 2040*<sup>48</sup>, Network Rail states that "Level crossings represent one of the biggest public safety risks on the railway. They account for 8% of total system risk on the British rail network", which is reflected in page 8 of its Statement of Case<sup>49</sup> which states "Level crossings are the single biggest source of catastrophic

---

<sup>48</sup> NR17

<sup>49</sup> NR26

risk on the railway". However, no evidence has been submitted by Network Rail in respect of those factors that account for the remaining 92% of system risk on the rail network.

- 3.148 The objectives set out on page 2 of *Transforming Level Crossings 2015 – 2040* include working towards making all passive crossings 'active' by 2040; providing clear warnings of approaching trains and replacing telephones and whistle boards to reduce the likelihood of human error; and prioritising the elimination of passive crossings on high speed lines<sup>50</sup> and at stations.
- 3.149 11 of *Transforming Level Crossings 2015 – 2040*, it is stated that "*the risk at passive crossings is not distributed evenly across the estate and the majority of the FWI risk resides at those locations with the highest usage and the greatest number of train services*". At page 12, Network Rail sets out its 'vision' which is to "*provide automatic train detection/warning systems at every passive level crossing*".
- 3.150 ELAF submit that the Order does not follow the objectives of the published strategies; there are no proposals within the Order for the provision of train detection or MSL systems to make 'passive' crossings 'active'; many of the crossings proposed for closure under the Order are not on high speed lines and do not have high usage or a large number of train services passing over them.
- 3.151 From the evidence of Network Rail's witnesses, it was evident that the crossings within the Scheme had not been selected on safety grounds. The crossings were selected by Network Rail because it considered that there was a grade separated crossing of the railway nearby such that bridge or tunnel works would not be required. Height differences would be dealt with by steps as opposed to ramps<sup>51</sup> which is against the spirit of accessibility for all.
- 3.152 With no major engineering works proposed, ELAF sees no need to use the 1992 Act, the purpose of which is to enable major works and infrastructure projects like HS2. Section 118A and s119A of the 1980 Act are procedures specifically for the closure and diversion of public rights of ways that cross railway lines. Given the geographic scattering of the mainly pedestrian crossings within the Scheme, the established procedures should have been used instead of the procedures of the 1992 Act.
- 3.153 The crossings included in the Order are quite widely scattered over the railway lines in Essex. The line characteristics vary from the high-speed London to Ipswich main line to single track branch lines with limited timetabled train movements. This scattergun approach does not facilitate the operational efficiencies that Network Rail are seeking and does not enable a holistic approach to individual lines to be taken in order to truly improve operational efficiency whilst having due regard to how people move around in an area.

---

<sup>50</sup> A high-speed line is defined on page 12 of NR17 as a line with a permitted speed of 100mph or greater

<sup>51</sup> E38 and T04 for example

### **Inspector's conclusions on strategic matters (SOM 1)**

- 3.154 Where an active railway is crossed by a public highway, whether that highway is a public footpath or a public carriageway, the crossing exposes both the user and the railway to a degree of risk. The degree of risk is likely to vary between crossings due to the characteristics of the crossing, the nature of the user and the frequency and number of trains passing over the crossing. The variation in risk is assessed by Network Rail and is reflected in its ALCRM model which makes a comparative ranking of the risk at each individual crossing.
- 3.155 Management of that risk is the responsibility of Network Rail under its obligations to run an efficient railway network. Within Network Rail's Anglia Region there are 771 level crossings of which 203 are located within the five highway authority areas covered by the Scheme. It is not disputed by any party that a reduction in the number of level crossings will reduce the risk to which users of the railway are exposed.
- 3.156 It is also not disputed that accidents at level crossings have the potential to impact upon the provision of both passenger and freight services whilst such accidents are investigated, or that when an incident at a crossing is the result of equipment failure the 'ripple' effect upon other parts of the network can be extensive.
- 3.157 Aside from the problems caused by collisions or equipment failure, other operational constraints arising from level crossings are the cautioning or stopping of trains where a crossing is misused, temporary speed restrictions on sections of line where sighting of approaching trains is insufficient and the maintenance of the track under crossing infrastructure which requires temporary closure of crossings. All these matters can have an impact upon line speeds, upon the provision of timetabled services and impacts upon the cost of management and maintenance of the railway.
- 3.158 In addition to the monetary cost of maintenance and renewal of the infrastructure of the crossings, there are also operational costs borne by Network Rail in the periodic inspection and assessment of each crossing on the network.
- 3.159 The aim of the Scheme is to reduce the number of level crossings present on the network within the Anglia region and thereby remove some of the operational constraints which level crossings present. The removal of points of potential conflict would reduce the potential for delays to services and facilitate future line speed increases. A reduction in the number of crossings would also reduce the risk to which users of the railway are exposed and provide cost savings from the required inspection and maintenance regimes.
- 3.160 The Scheme accords with the ORR's strategy for the regulation of health and safety risks at level crossings and the requirement to reduce level crossing risk by 25% during the period 2015-2019. The Scheme supports Network Rail's strategy for transforming level crossings between 2015 and 2040 and has been developed as part of the Anglia CP5 Level Crossing Risk

Reduction Strategy. The Scheme seeks to implement phases 1, 2 and 4 of that strategy.

- 3.161 The Statement of Aims<sup>52</sup> sets out the benefits which are sought through the Scheme, 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.
- 3.162 I am satisfied that these benefits would arise from the Scheme. The Scheme is part of a wider long-term strategy which seeks to reduce the number of at-grade crossings of the railway with the aim of closing 'passive' level crossings where possible and progressively converting those 'passive' crossings which cannot be closed to 'active' crossings by means of the installation of technology. The 203 crossings within the highway authority areas encompassed by the Scheme were assessed by reference to the criteria set out in Phases 1 to 5 of the Anglia Strategy with the crossings which comprise the Scheme being included on the basis that a suitable and convenient alternative route was available or could be provided.
- 3.163 Whereas it has been suggested that a 'holistic' approach to the closure of crossings on a given stretch of line could have been taken, the Scheme is consistent with both the national and regional strategies promoted by Network Rail.

## **SOM2 The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme.**

### **The Case for Network Rail**

- 3.164 Network Rail submits that the 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 the Anglia region and nationally.
- 3.165 The Anglia CP5 Level Crossing Risk Reduction Strategy itself identifies the difficulties which have been experienced in seeking to close level crossings through other processes (specifically, proceedings under the 1980 Act). Network Rail contends that the various procedures under the 1980 Act are not ones which would achieve the strategic objectives which are at the basis of seeking to implement this Scheme.
- 3.166 In developing the Scheme, active consideration was not given to the installation of technology or the provision of infrastructure under or over the railway as an alternative to crossing closure. To do so would have been contrary to the purpose of phases 1 and 2 of the Strategy which was to seek opportunities to rationalise the level crossing estate by diverting users

---

<sup>52</sup> NR04



to an alternative crossing point so that closure of a crossing could be carried out without the need for new infrastructure to be provided.

- 3.167 Whilst installation of technology may have assisted in reducing, or managing, risk at the 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 or the obligations under 'Managing Public Money'.
- 3.168 That is not to say that alternatives to closure on a crossing by crossing basis have not been considered. Alternatives had been considered as part of the optioneering exercises carried out by the LCM responsible for a particular crossing as part of the risk assessment process, but not as part of the Scheme. Furthermore, with regard to particular crossings proposed for closure, in some cases several possible diversionary routes were considered and opened to public consultation. In addition, following discussions with affected landowners, alternative solutions were considered with the final decision on which alternative route to put forward being taken in the light of that consultation.

### **Inspector's conclusions on SOM2**

- 3.169 There are no alternatives being put forward to the Scheme as a whole. The Scheme is promoted under s1 of the 1992 Act as approval would confer upon Network Rail the necessary powers to enable its implementation. The powers sought would not be available if closure of the crossings and the diversion or extinguishment of the public rights of way which cross them were pursued under the provisions of the 1980 Act. The Scheme is also promoted under s1 of the 1992 Act as those crossings which carry private rights of access cannot be dealt with under the provisions of the 1980 Act.
- 3.170 With regard to the individual crossings comprised in the Scheme, Network Rail's consulting engineers were commissioned to consider alternative routes for 72 of the crossings which had been identified as falling within Phase 1 and Phase 2 of the Anglia Strategy and to determine whether a suitable and convenient alternative means of crossing the railway existed or could be provided.
- 3.171 To inform this assessment a DIA scoping study was produced, along with DIAs for individual crossings as recommended by the scoping study. Road Safety Audits were also undertaken where a proposed alternative involved use of a public carriageway along with ATC surveys of those carriageways. Camera censuses of use of the crossings and consultation with highway authorities, other local authorities and other stakeholders was undertaken.
- 3.172 The proposals for each crossing were developed through 3 rounds of public consultation<sup>53</sup> and through consultation with local authorities. In addition, consideration was given to alternative proposals put forward by affected

---

<sup>53</sup> NR32/2 tabs 2, 3 and 4

landowners<sup>54</sup>. The routes which were finally submitted as part of the scheme were those considered by Network Rail to provide suitable and convenient alternative means of crossing the railway for current users of the crossings.

---

<sup>54</sup> NR32/2 tab 7

## 4. PLANNING AND POLICY MATTERS

### **SOM3 The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies**

#### **The Case for Network Rail**

- 4.1 Network Rail is satisfied that the proposals contained in the Order are consistent with the National Planning Policy Framework (NPPF) and with national and local transport policies and local environment and planning policies.
- 4.2 Paragraph 8 of the NPPF focuses on achieving sustainable development through three overarching objectives a) an economic objective – to help build a strong, responsive and competitive economy, including by identifying and coordinating the provision of infrastructure; (b) a social objective – to support strong, vibrant and healthy communities, including by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and (c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution and mitigating and adapting to climate change, including moving to a low carbon economy.
- 4.3 The proposed Scheme will contribute to each of these three objectives, which are consistent with the strategic case for the reduction of the number of level crossings in the Anglia region, reducing the constraints on the operation and enhancement of the railway network for the provision of public transport services and improving the safety of those who come into contact with the railway.
- 4.4 The Scheme will contribute to economic growth, particularly by removing constraints on the network, so as to provide a positive improvement to quality of life by contributing to improvements in the conditions in which people live, work, travel and take leisure. Furthermore, it recognises the intrinsic character and beauty of the countryside and supporting rural communities, assists in actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling and assists in supporting local strategies to improve health, and deliver sufficient facilities to meet local needs.
- 4.5 Network Rail believe that the Scheme is consistent with delivering sustainable development, the removal of constraints on the rail network to enable increased resilience and capacity is consistent with building a strong, competitive economy, supporting sustainable economic growth and a low carbon future.

- 4.6 Paragraph 98 of the revised NPPF states that planning decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users such as by adding links to existing networks.
- 4.7 Given the limited nature of the scheme, the proposals protect and in certain cases enhance public rights of way and access in accordance with paragraph 98, maintain the openness of the countryside and are consistent with policies relating to protection of the Green Belt, Flood Risk and conserving the natural environment.
- 4.8 The proposals fully support promoting sustainable transport to contribute to wider sustainability and health issues. Paragraph 110 of the revised NPPF requires that applications for development should give priority to pedestrian and cycle movements, facilitate access to high quality public transport and create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The Scheme is entirely consistent with the principles expressed in the revised NPPF, in particular that high quality public transport would be better realised by the removal of level crossings from the railways in the Anglia Region.
- 4.9 Paragraph 124 of the revised NPPF provides that good design is a key aspect of sustainable development as it creates better places in which to live and work and helps make development acceptable to communities. The works promoted by the Order and deemed planning consent are minor in nature and already commonplace within the rural settings in which the majority of the crossings are found. The request for deemed planning permission contains a condition which requires approval by the local planning authority of the design and external appearance of the proposed footbridges and that works are carried out in accordance with approved details.
- 4.10 Chapter 15 of the revised NPPF is concerned with conserving the natural environment. An extensive programme of environmental surveys has been carried out to understand local constraints and inform the development of the scheme.
- 4.11 An Environmental Screening Request Report<sup>55</sup> was submitted to the Secretary of State in January 2017, with a request for a direction as to whether an EIA was required. The screening report assessed 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. The report concluded that there would be no potentially significant effects, either at individual crossings or from the Order scheme as a project. By letter dated 15 March 2017, the

---

<sup>55</sup> NR 155

- Secretary of State notified Network Rail of his decision that an EIA was not required.<sup>56</sup>
- 4.12 A Precautionary Method of Works<sup>57</sup> has been submitted to local planning authorities for agreement which will be the subject of a planning condition. The Scheme is consistent with the principles set out in Chapter 15 of the revised NPPF.
- 4.13 The National Policy Statement for National Networks (2014) (NPSNN) relates to Nationally Significant Infrastructure Projects but contains policy relevant to the scheme. Policy 2.2 notes a critical need to improve the national networks to address crowding on the railways and to provide safe, expeditious and resilient networks to support social and economic activity. Policy 2.9 requires development to enhance accessibility for non-motorised users; policy 2.29 requires the railway network to provide a safe and reliable route to work, facilitate increases in business and leisure travel, support regional and local public transport to connect communities with public services, with workplaces and with each other, and to provide for the transport of freight to and from ports in order to meet environmental goals and improve quality of life. Policy 3.12 requires that rail schemes ensure that the risks of passenger and workforce accidents are reduced so far as reasonably practicable and should seek to further improve safety where the opportunity exists.
- 4.14 The EU Rail Safety Directive (Directive 2004/49/EC) seeks to further improve the safety of rail systems throughout Europe, where reasonably practicable to do so. It requires that all those operating the railway system should bear the full responsibility for the safety of the system. Specifically, article 4(1) provides that "*Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved*". Annex I to the Directive lays down "*common safety indicators*" for assessing whether safety targets are met. As well as accident data, "one such indicator is the "*number of level crossings (total and per line kilometre)*".
- 4.15 The ORR's "*Strategy for regulation of health and safety risks – 4: Level crossings*" states: "*In particular, 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*", and "*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 (Management of Health and Safety at Work regulations 1999 Schedule 1) in European and UK law*".
- 4.16 The Scheme is consistent with the direction given by the ORR "*Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19*" published in October 2013 which requires Network Rail to

---

<sup>56</sup> NR11

<sup>57</sup> NR 167

*“maximise the reduction in risks of accidents at level crossings”*, specifically through the delivery of level crossing closures and safety enhancements.

4.17 The crossings included in the Order are located across the administrative areas of 9 district councils, 5 borough councils, a unitary authority and a city council. In addition, the Scheme encompasses the non-metropolitan county councils of Essex and Hertfordshire. All councils have been statutory consultees under the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. All planning authorities were provided with the EIA Screening Report which was submitted to the Secretary of State.

4.18 Three of the planning authorities objected to the Order. Southend-on-Sea Borough Council objected to the closure of E32 Woodgrange Close; CBC objected to the closure of E41 Paget, E51 Thornfield Wood and E52 Golden Square; Thurrock Council objected to the closure of E29 Brown and Tawse and T04 Jefferies.

*Development plans*

4.19 NR acknowledge that many of the local authorities in the Scheme area have adopted policies which seek to improve sustainable transport links and promote walking as a healthy activity. The policies of each of the local planning authorities which are considered to be relevant are briefly set out below.

4.20 *Braintree District Council policy CS7 Promoting Accessibility for All*: “The Council will work with partners to improve accessibility, to reduce congestion and reduce the impact of development on climate change. Sustainable transport links will be improved, including provision of and contributions for cycling and walking and quality bus partnership”. A table of Key Transport Projects under Policy CS7 includes a feasibility study of the Braintree branch line improvements to improve frequency of services.

4.21 *Braintree DC Policy CS9 Built and Historic Environment*: “The Council will promote and secure the highest possible standards of design and layout in all new development and the protection and enhancement of the historic environment in order to promote the contribution that historic assets can make towards driving regeneration, economic development, tourism and leisure provision.”

4.22 *Brentwood Borough Council Policy T12 Rail Services*: “The Council in consultation with Network Rail, the train operators and others, will continue to seek, as a minimum, retention of existing services and where possible, encourage the introduction of improved and new services.”; *Policy GB27 Access to the Countryside*: “The Council will safeguard the existence and amenity of rights of way including footpaths, bridleways, byways and minor rural roads and will, through its countryside management service and encouragement of local landowners, seek to improve access to the countryside through establishment and maintenance of footpaths and bridleways and through voluntary agreements to manage green belt land on or near the rural-urban fringe”.

- 4.23 *Broxbourne Borough Council Policy T9 Pedestrian Needs*: "Development proposals will be expected to provide for improved pedestrian accessibility by (a) aiding pedestrian priority in both new developments and existing locations whenever and wherever possible (b) aiding pedestrian access to and between modes of transport (c) ensuring that construction standards for footways, footpaths and crossing facilities make them suitable for all (d) upgrading footways and towpaths"; *Policy GBC17 Protection and Enhancement of Public Rights of Way* "Planning permission will not be granted for development which adversely affects any PROW unless the proposal includes diversion of the PROW to a route which is no less safe and convenient for public use. Development adjoining or otherwise affecting an existing PROW will be expected to demonstrate that consideration has been given to the existence of the right of way in the design of the development. In association with ECC and other organisations, the Council will seek to ensure that existing rights of way are maintained and enhanced wherever possible."
- 4.24 *Castle Point Borough Council Policy RE12 Public Rights of Way*: "The Council will encourage the provision of a high-quality network of public rights of way which are accessible to people with disabilities and will seek the inclusion of such facilities within appropriate development schemes. Particular encouragement shall be given to the provision of public bridleways, except where this would prejudice the interests of walkers and other users of existing public footpaths. All public rights of way identified on the definitive map will be safeguarded, improved and extended where possible."
- 4.25 *Chelmsford City Council Policy CP13 Minimising Environmental Impact*: "The Borough Council will seek to ensure that development proposals minimise their impact on the environment and that they do not give rise to significant and adverse impacts upon health, amenity including air quality, and the wider environment".
- 4.26 *Colchester Borough Council Policy TA2 Walking and Cycling*: "The Council will work with partners to promote walking and cycling as an integral and highly sustainable means of transport. Regional and rural links, including national cycle routes, will be improved and better connected with local destinations. The design and construction of infrastructure will be improved to make walking and cycling more attractive, direct and safe. Quality and convenient pedestrian crossings will be promoted to facilitate safe and direct movement across busy roads. Walking and cycling improvements will be focused on centres, schools, workplaces and public transport interchanges. In particular, the Council will seek to provide excellent walking and cycling connections into and through the Town Centre".
- 4.27 *Policy ENV1 Environment*: "The network of strategic green links between the rural hinterland, river corridors, and key green spaces and areas of accessible open space that contribute to the green infrastructure across the Borough will be protected and enhanced."
- 4.28 *Development Policy DP1 Design and Amenity* "All development must be designed to a high standard, avoid unacceptable impacts upon amenity, and

demonstrate social, economic and environmental sustainability. Development proposals must demonstrate that they, and any ancillary activities associated with them, will (ii) provide a design layout that takes into account the potential users of the site including giving opportunities to pedestrian, cycling and public transport access, and the provision of satisfactory access provision for disabled access and those with restricted mobility."

- 4.29 *East Hertfordshire District Council Policy LRC9 Public Rights of Way:* "Proposals for development must not adversely affect any Public Right of Way and, where possible, should incorporate measures to maintain and enhance the Rights of Way network." *Policy ENV13 Development and SSSIs:* "Proposals for development in, or likely to affect, Sites of Special Scientific Interest (SSSI) will be subject to special scrutiny. Where such development may have an adverse effect, directly or indirectly, on the SSSI it will not be permitted unless the reasons for the development clearly outweigh the nature conservation value of the site itself and the national policy to safeguard the network of such sites. Where development is permitted the District Council will impose conditions or use planning obligations to ensure the protection and enhancement of the site's nature conservation interest.
- 4.30 *Epping Forest District Council Policy CP1 Achieving Sustainable Development Objectives:* "avoid, or at least minimise, impacts of development upon the environment, particularly in ways likely to affect future generations; meet the employment needs of those who are employed and secure/achieve a mix of local employment and commercial activities that both meet local needs and reduce the need to travel, and reduce reliance on the motor car".
- 4.31 *Policy CP2 protecting the Quality of the Rural and Built Environment:* "sustaining and enhancing the rural landscape, including conserving countryside character, in particular its landscape, wildlife and heritage qualities, and protecting countryside for its own sake".
- 4.32 *Policy CP9 Sustainable Transport:* "Where appropriate, development schemes will be required to provide for a sustainable and integrated transport system; promote and provide for sustainable means of transport, especially to key community facilities, particularly by public transport, cycling, and walking; ensure access by all sectors of the community, including the mobility impaired and the economically disadvantaged; improve passenger transport services; provide for a safe and efficient transportation network that improves the accessibility of local communities".
- 4.33 *Policy RST2 Enhance Rights of Way Network:* "In determining planning applications the Council may seek the appropriate expansion of the rights of way network"; *Policy RST3 Loss or Diversion of Rights of Way:* "The Council will not grant planning permission for development proposals which entail the loss, stopping-up, or unreasonable diversion of public rights of way".



- 4.34 *Harlow District Council Policy SD3 Sustainable Development*: "When considering development proposals the following should be taken into consideration (1) the promotion of sustainable development; (3) the sequential test so that preference is given to the use of previously developed land and existing buildings; (5) there should be no loss of Essex Biodiversity Action Plan habitats or species".
- 4.35 *Policy L13 Public Rights of Way*: "The existing network of definitive public rights of way within Harlow will be safeguarded. New footpaths, bridleways and cycleways will be required as part of new developments, to link with existing routes outside and within the town's boundary, and to provide better access to the surrounding countryside and areas of woodland within the town. Proposals for new or the enhancement of existing public rights of way will be required to meet the highest standards of design, accessibility and personal safety."
- 4.36 *London Borough of Havering Policy CP7 Recreation and Leisure*: "The Council will, in partnership with other bodies, seek to retain and increase access to recreation and leisure opportunities by...improving opportunities for informal recreation in the countryside....by improving footpaths and bridleways and the links between open spaces, the urban areas, the open countryside..".
- 4.37 *LBH Policy CP10 Sustainable Transport*: "A choice of sustainable transport modes, where travel is necessary, will be promoted by... working in partnership with the relevant agencies to seek funding for and deliver...improvements to the c2c railway line from London to Southend via Rainham and Upminster including the new Beam Reach station.... By ensuring new developments in their design and layout prioritise the needs of pedestrians and cyclists and minimise the distance to local public transport nodes".
- 4.38 *LBH Policy CP15 Environmental Management*: "To reduce their environmental impact and to address the causes and adapt to and mitigate the effects of climate change in their location, construction and use, new developments should... minimise their use of natural resources, including the efficient use of land...".
- 4.39 *LBH Policy CP156 Biodiversity and Geodiversity*: "The Council will seek to protect and enhance the borough's rich biodiversity and geodiversity, in particular priority habitats, species and sites. It will increase public awareness and appreciation of biodiversity and will seek to put in place a strategic framework for the development and delivery of the London Riverside conservation park".
- 4.40 *LBH Policy DC22 Countryside recreation*: "Opportunities for informal recreation in the countryside will be increased by the improvement of the public rights of way network including links to the urban areas".
- 4.41 *Rochford District Council Policy T1 Highways*: "Developments will be required to be located and designed in such a way to reduce reliance on the private car"; *Policy T6 Cycling and Walking*: "the Council will work with ECC,

along with other organisations such as Sustrans, to ensure that a safe and convenient network of cycle and pedestrian routes is put in place to link homes, workplaces, services and town centres”.

- 4.42 *Southend on Sea Borough Council Policy KP2 Development Principles*: “All new development, including transport infrastructure, should contribute to economic, social and environmental regeneration in a sustainable way throughout the Thames Gateway Area...this must be achieved in ways which...facilitate the use of travel modes other than the private car....secure improvements to transport networks, infrastructure and facilities....”.
- 4.43 *Policy CP3 Transport and Accessibility*: “Improvements to transport infrastructure and services will be sought in partnership to achieve a ‘step change’ in provision to achieve a modern integrated transport system necessary to unlock key development sites and secure the sustainable jobs led regeneration of Southend...by improving road and rail network to deliver improvements in accessibility, traffic flows, travel choice and freight distribution....”.
- 4.44 *Tendring District Council Policy Q11 – Environmental Impacts and Compatibility of Uses*: “All new development should be compatible with surrounding land uses and minimise any adverse environmental impacts.”  
*Policy EN5 Areas of Outstanding Natural Beauty (AONB)*: “Development which would harm or otherwise fail to conserve the natural beauty of the landscape of an AONB, including views toward it from outside, will not be permitted. Major development will only be approved if there is an overriding national need, and in the absence of any alternative sites outside the AONB”.
- 4.45 *Policy TR4 Safeguarding and Improving Public Rights of Way*: “Where development affects an existing public right of way, planning permission will be refused unless the development can accommodate the definitive alignment of the path. A formal diversion providing a safe, attractive and convenient alternative may be considered where appropriate. Where opportunities exist the improvement of existing routes and the creation of additional links in the network of public rights of way and cycle tracks will be sought”.
- 4.46 *Thurrock Council Policy CSTP14 Transport in the Thurrock Urban Area*: “The Council will work with partners to deliver at least a 10% reduction in car traffic from forecast 2026 levels. To achieve this the Council and partners will (i) phase the delivery of a network of walking and cycling core routes, with priority in growth areas; (v) ensure new development promotes high levels of accessibility by sustainable transport modes and local services are conveniently located to reduce the need to travel by car.”
- 4.47 *Policy CSTP15 Transport in Greater Thurrock*: “In Greater Thurrock, accessibility, especially to work, education and healthcare will be improved. To achieve this, the Council and partners will (iii) prioritise Rights of Way/Bridleway improvements (iv) Develop local walking and cycle routes that link to the Thurrock urban area and that link the National Cycle Network Route 13 to employment.”

- 4.48 *Policy CSTP16 National and Regional Transport Networks*: "The Council will work with partners to deliver improvements to national and regional transport networks to ensure growth does not result in routes being over capacity. To achieve this, the Council and partners will (ii) improve capacity by lengthening platforms at key railway stations (v) improve capacity and connections between modes of transport at key transport interchanges such as rail stations".
- 4.49 *Uttlesford District Council Policy GEN2 Design* "Development will not be permitted unless its design meets all the ....criteria and has regard to adopted Supplementary Guidance and Supplementary Planning Documents". *Policy GEN7 Nature Conservation*: "Development that would have a harmful effect on wildlife or geological features will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation".
- 4.50 *Policy ENV7 The Protection of the Natural Environment – Designated sites*: "Development proposals that adversely affect areas of nationally important nature conservation concern, such as Sites of Special Scientific Interest and national Nature reserve, will not be permitted unless the need for the development outweighs the particular importance of the nature conservation value of the site or reserve.
- 4.51 ECC is responsible for keeping the definitive map and statement up to date and for developing ROWIPs. Although not part of the development plan, the plans and policies of ECC can be material considerations. Relevant plans which have been considered are the Local Transport Plan 2011 – 2025; ROWIP; Essex Cycling Strategy; Essex Highways Maintenance Strategy; Highways and Transportation Asset Management Strategy; Essex Walking Strategy
- 4.52 Similarly, Hertfordshire County Council is a highway authority whose plans and policies do not form part of the development plan. The key policy document in relation to the Scheme is the Local Transport Plan 2018-2031.
- Assessment*
- 4.53 National and local planning policies supports the provision of safe transport networks. The revised NPPF supports the provision of safe routes for pedestrians and cyclists; providing a safe railway is a key objective of the NPSNN; Epping Forest Policy CP9 supports the provision of "*a safe and efficient transportation network that improves the accessibility of local communities*"; Rochford District Council policy T6 states the Council's commitment "*to ensure that a safe and convenient network of cycle and pedestrian routes is put in place to link homes, workplaces, services and town centres*".
- 4.54 Network Rail submits that in terms of improving the operational efficiency of the railway, Southend on Sea Borough Council Policy CP3 promotes improvements to transport infrastructure by seeking development which would improve the road and rail network, traffic flows and travel choice. London Borough of Havering Core Strategy Policy CP10 seeks to promote a

choice in sustainable transport modes including improvements to the c2c railway line from London to Southend. Thurrock Council's Core Strategy Policy CSTP16 seeks to improve national and regional transport networks to ensure that capacity is not outstripped by economic growth. Brentwood Borough Council Policy T12 seeks the retention of existing rail services and the introduction, where possible, of improved and new services.

- 4.55 In terms of the County Transport Policies, Dr Southgate for ECC acknowledged that the principles underlying the Anglia Strategy were broadly in line with the Council's long-term transport strategy and aims to improve connectivity and support economic growth<sup>58</sup>. Policy 10 of Hertfordshire County Council's Transport Plan supports improvements to the rail network to promote rail use and reduce car use and seeks improvements to train services with regard to capacity, journey times, frequency and the range of destinations served.
- 4.56 National and local planning policies also support the protection and enhancement of the PROW network. In accordance with national policy, the importance of the PROW network is recognised in all local development plans, which also support the promotion of walking and cycling. Examples of such policies are Harlow District Council Policy L13; Tendring District Council Policy TR4; Epping Forest District Council Policies RST2 & 3; Brentwood Borough Council Policy GB27; Broxbourne Borough Council Policy GBC17 and Castle Point Borough Council Policy RE12.
- 4.57 In terms of the District and Borough Council local plan policies a number are concerned with the provision of new PROW in association with new developments or seek enhancements of the rights of way network as part of new development. That is not the purpose of this Order, nor what is required under s.5(6) of the 1992 Act.
- 4.58 A policy concerned with enhancing PROW links which is clearly directed towards new built development is not a relevant policy for the purposes of considering the Order proposals – save, at most, to the extent that it illustrates the authority's general approach to public rights of way. Similarly, the ROWIPs should not be taken out of context. They are documents expressly directed at securing improvements to the public rights of way network in the highway authority's area.
- 4.59 The Scheme is not a public rights of way improvement or enhancement scheme. It relates to the operation of a transport network under s1 of the 1992 Act. It is not suggested that local plan policies or the policies within highway authorities ROWIPs do not fall to be considered, however such consideration must take place within the legal framework against which the Order application falls to be determined.
- 4.60 Network Rail acknowledge that some local plan policies (such as Harlow District Council's Policy L13) set out the standards to which new public rights of way are required to meet. However, where the Secretary of State

---

<sup>58</sup> OBJ 195 W1/1 paragraph 5

was satisfied that a diversion proposed under this Order would provide a suitable and convenient replacement for existing users, it would not be appropriate for the crossing to be excluded from the Order simply because a local plan policy imposed different or more onerous requirements for the creation of a new PROW. It is submitted that such local plan requirements cannot 'trump' the test set out in s5(6) of the 1992 Act.

- 4.61 The alternative routes advanced as part of the Scheme seek to protect the rights of way network as a whole and provide enhancements to the network where possible by providing alternatives which are considered to be suitable and convenient for existing users. This approach accords with relevant national and local planning policies.
- 4.62 The NPPF emphasises the importance of design, and the principle of good design are also enshrined in the relevant development control policies in each local planning authority area. The works envisaged under the Scheme are minor in nature and are commonplace within the predominantly rural settings of many of the crossings at issue. The Scheme requires the design of the works and ancillary features to be approved by the relevant authorities.
- 4.63 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'<sup>59</sup> for instance, walking and cycling should be encouraged. There are clear health and social benefits which arise from walking; those benefits, and the importance of maintaining the PROW network, are not in dispute, and are wholly accepted by Network Rail.
- 4.64 Similarly, Network Rail recognises the need to ensure that its Order proposals do not undermine the objectives sought to be achieved by the highway authorities' ROWIPs: Ms Tilbrook's evidence was to the effect that she considered the proposals advanced in the Order were consistent with those objectives.
- 4.65 However, those high-level policies and aspirations cannot be seen in isolation. Non-motorised journeys are part of a wider system of sustainable travel, which includes rail travel. The high-level policy documents also recognise the importance of access to local routes for non-motorised users. 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.
- 4.66 Network Rail consider that for each of the proposals in the Order, the right balance has been struck by providing a suitable and convenient alternative route. Other parties take a different view and have objected to those crossings where they consider the proposed diversionary route is not suitable and convenient.

---

<sup>59</sup> OBJ 148 APP7 p3

- 4.67 In developing the Order proposals, local planning policies were considered, and the plans and proposals shared with all local planning authorities – it should be noted that with the exception of CBC, none of the local planning authorities have raised any concerns about compliance of the Order proposal with their local plan policies.
- 4.68 Network Rail acknowledges that both the Ramblers and CBC have set out their positions in regard of the extent to which they consider the proposals comply with national and local policy. There is little difference in the policies identified by the parties as potentially relevant to the Order proposals. There are, however, two differences in approach. The first (as between CBC and Network Rail) relates to the legal framework within which planning policy falls to be considered. The second reflects what seems to be a general difference in approach between Network Rail on one hand and the Ramblers and CBC on the other as to how the Order proposals fall to be assessed generally.
- 4.69 Network Rail maintains that once the strategic case for closure of level crossings has been established, what falls to be considered at a crossing specific level is whether the proposed diversion route is suitable and convenient for existing users. In Network Rail's submission, that approach also applies when considering the extent to which Order proposals comply with national or local policy; that is, what has to be considered in regard of planning policy is the extent to which the objectives which would be achieved by the Order as a whole comply with policy – not to the extent to which closure of a particular crossing is justified by reference to the local plan policies for the area in which it is situated.
- 4.70 As to the legal framework against which planning policy falls to be considered, contrary to the submissions made by CBC, the request for deemed planning permission does not fall to be determined in accordance with s38(6) of the PCPA04: namely, that the determination must be made in accordance with the development plan documents for the area unless material considerations indicate otherwise.
- 4.71 In *R (on the application of Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy & Climate Change* [2012] EWHC 46 (Admin), the Court rejected the Claimant's contention that in deciding whether to give a direction under s90(2) TCPA90 that planning permission be deemed to have been granted, the Secretary of State was under a duty to determine the request in accordance with s.38(6) PCPA04.
- 4.72 Whilst this was a case regarding the deemed granting of planning permission under the Electricity Act 1989 the reasoning given by the Court would apply such that s38(6) of the PCPA04 does not apply to determinations to make a TWAO which would also involve the making of a direction granting planning permission under s90 of the TCPA90. It follows that there would be no proper basis for adopting a different approach as suggested by CBC where the request for deemed planning permission is made under s90(2A) of the TCPA90.

- 4.73 It is acknowledged that in paragraph 1.28 of the 'Guide to TWA Procedures', the guidance provides that "*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....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*".
- 4.74 It should be noted that this Guidance pre-dates the decision in *Samuel Smith Old Brewery (Tadcaster)* case as the guidance was published in June 2006 and has not been updated following that decision, and that to the extent it remains valid as guidance as to how the Secretary of State will approach decision making, it cannot be equated to the statutory test contained in s38(6) of the PCPA04 which the Court has confirmed does not apply to requests for deemed planning permission under s90 of the TCPA90.
- 4.75 In brief, Network Rail submits that the request for deemed planning permission under s90(2A) of the TCPA90 does not fall to be determined in accordance with s38(6) of the PCPA04.
- 4.76 The dispute as to whether the Order proposals comply with relevant local policies has to be considered on a crossing by crossing basis – and turns on whether the proposed diversionary route is or is not "suitable and convenient for existing users".
- 4.77 The proposed works associated with the closure of level crossings will result in improvements to the safety of users of level crossings and the operational railway. Connectivity will be maintained through the provision of upgrades and new additions to the existing public rights of way network. Local and national planning policy has been considered throughout the development of the Scheme and the proposals comply with the revised NPPF and policies set out within the adopted Local Plans and transport plans of the local authorities whose areas are impacted by the scheme.

*Road safety – general matters*

- 4.78 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. It is common ground that there is no established methodology for comparing risk at level crossings with risks on rural roads.
- 4.79 Road Safety Audits on the proposed alternative routes had been carried out on behalf of Network Rail in accordance with the requirements of Volume 5, Section 2, part 2 of the Design Manual for Road and Bridges (HD19/15) and ECC had conducted road safety checks on those routes to which it had made objections. If the powers sought under the Order are confirmed a stage 2 RSA will also be conducted. The disagreement between Network Rail and ECC in respect of road safety turns on the outcomes of those assessments, not the process.

- 4.80 Network Rail recognises that the Ramblers take issue with the process followed with regard to the RSAs that were conducted and assert, essentially, that Network Rail's RSAs should be disregarded, as 'fatally flawed'. Network Rail considers this assertion is wholly without merit. It is, notably, not a view shared by ECC – nor it is a concern that has been raised by any of the other highway authorities whose areas are impacted by the Scheme.
- 4.81 Network Rail acknowledges that the relevant highway authority, rather than Network Rail itself, should have been identified as the "Overseeing Organisation" for the RSAs, and that the RSA briefs were not 'signed off' by the relevant highway authority. Network Rail submits the relevant highway authority was not identified as the 'Overseeing Organisation' does not affect the substance of the audits or the way the auditors carried out their work. The RSAs had been shared with the relevant highway authorities during the Order development who had not challenged the process in any way.
- 4.82 Reference is made by the Ramblers to RSA reports 367516/RPT016 Revision B and 367516/RPT017 Revision B having been approved by a member of the Scheme's design team. These documents required a very minor amendment correcting one erroneous reference to a version of another document in the report. The approval of the documents was discussed and agreed with the independent RSA team at the time and considered appropriate due to the minor nature of this revision. A contemporaneous record of the changes made to these documents is set out in NR32-5; the approval of the revisions to the reports does not mean that the RSAs have not been prepared independently, or that the content of the RSAs is in any way undermined.
- 4.83 The RSA are also criticised by the Ramblers who contend Criticism that the auditors were not provided with sufficient information to undertake the task in hand; it would have been open to the auditors to request further information, but no such requests were made. It can only be concluded that the level of information provided was considered sufficient.
- 4.84 The evidence provided by ECC and the Ramblers regarding recorded collisions by road classification or pedestrian casualties within a 2 Km radius of the crossings did not demonstrate that the use of the roads as part of an alternative route would result in pedestrian accident or injury. The proposal for an alternative route to utilise a public carriageway has only been pursued in those cases where the alternative route would not present any problems in terms of road safety.
- Equality Act 2010*
- 4.85 Network Rail submits that consideration has been given to equalities issues at each stage of the development of the Scheme. The need for DIAs is identified in the Level Crossing Reduction Strategy. A DIA scoping study<sup>60</sup> was undertaken by Network Rail's specialist consultants during 2016 to

---

<sup>60</sup> NR 119



- identify potential issues related to the proposed crossing closures and gather evidence on the potential impacts on people with different protected characteristics in order to make an assessment about which crossings required further consideration through a full DIA.
- 4.86 The scoping study considered level crossings throughout the Anglia region and includes crossings in Norfolk, Suffolk, Cambridgeshire, Hertfordshire, Essex, Havering and Thurrock. The scoping study sets out the public policy drivers behind the need to undertake a DIA along with the equality drivers particular to Network Rail. It notes the 9 protected characteristics defined by the Equality Act 2010 and seeks to provide a systematic assessment of the likely or actual effects of policies or proposals on social groups which possess those protected characteristics.
- 4.87 The scoping study comprised a review of existing policy and strategy at national level, an exploration of the relevant aspects of the proposals in relation to challenges faced by people with protected characteristics and socio demographic mapping focussed on the population density of particular groups with protected characteristics to understand the composition of the local population surrounding each crossing and the extent to which diversity and equality was likely to be an issue in that area.
- 4.88 A red – amber – green rating was applied to each site studied where a red rating required a full DIA to be undertaken; an amber rating showed that a crossing could be closed following infrastructure interventions; a green rating showed that a crossing could be closed immediately with minimal impact and intervention.
- 4.89 Issues such as user safety, accessibility, distance to be walked, community severance and rurality were considered as potentially impacting upon social groups and persons with protected characteristics. Each of the level crossings included in the Order were assessed and the assessment sets out details or risk factors identified, the accessibility of each crossing, the community profile and resources of the immediate area and a proposed solution. Where a number of possible options were being considered as alternatives to the crossing, each of those alternatives was considered using the same methodology.
- 4.90 The scoping study exercise informed the assessment work to determine if the viability of the proposed solution for each of the crossings would be affected, and if an alternative option existed that might be more appropriate. The scoping study rated four crossings as requiring full DIAs - E05 Fullers End; E49 Maria Street; E32 Woodgrange Close and T04 Jefferies.
- 4.91 An Equality and Diversity Overview report<sup>61</sup> was prepared by specialist consultants which included a review of the proposals put forward for each of the level crossings to understand the content and proposed changes at each site. The overview report adopted the methodology used in the earlier

---

<sup>61</sup> NR 121

scoping study but focused attention on the 61 crossings within Essex, Hertfordshire, Thurrock, Havering and Southend included in the draft Order. The overview report also uses the same red – amber – green rating as the scoping study and provides an analysis of each crossing taking into account current accessibility, local risk factors, local population and amenities, the works proposed to effect the diversion and the accessibility of the diverted route.

- 4.92 Arising from the conclusions of the scoping study and overview report, full DIAs were carried out for 14 of the crossings within the Scheme. These assessments identified key conclusions and recommendations relating to the proposed level crossing closures, with the conclusions and recommendations informing the design of the final proposals which incorporated any features or mitigation measures considered necessary.
- 4.93 The evidence provided in relation to each crossing explained how that work has informed the consideration, and assessment, of the Order proposals. Network Rail does not accept the suggestion that it has failed to “have due regard” to the requirements and needs of others – which is the duty in s149 of the 2010 Act.
- 4.94 Network Rail submits that the duty to “have due regard” in fact rests with the decision maker in this context: namely, the Secretary of State. 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 each of the crossings proposed for closure, and the characteristics of the public rights of way leading to and from the crossings. Any points raised by objectors as to matters they say were not and/or should have been considered in Network Rail’s own DIA assessments will no doubt be considered in that light. Network Rail does not accept that there were ‘deficiencies’ in its assessment, or the criticisms made of those assessments.
- 4.95 Network Rail consider that they have complied with their obligations under the Public Sector Equality Duty (‘PSED’) set out in section 149 of the 2010 Act.

### **The Case for the Ramblers**

- 4.96 Network Rail is seeking a direction under s90 (2A) of the TCPA90 that deemed planning permission will be given for those works that constitute development for which planning permission is necessary. However, SOM3 refers generally to the “proposals” in the Order irrespective of whether these, in fact, require planning permission.
- 4.97 The Guide to TWA Procedures provides further guidance as to how the Secretary of State will consider a scheme’s compliance with planning policy at p. 21: “*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 “*Any public inquiry into a TWA order application will consider*

*the planning merits of the proposals having regard to relevant published policies and plans, whether formally adopted or in draft form."*

4.98 When considering the scheme's policy-compliance, paragraph 1.28 of the Guidance makes clear that the Secretary of State will wish to consider the extent to which the project conflicts with relevant policies in the development plan. Those projects which conflict with relevant development plan policies are unlikely to be authorised unless material considerations indicate otherwise.

4.99 It is accepted that other policy documents (outside of the relevant development plans), including the NPPF, the NPSNN and the relevant ROWIPs, are to be seen as "other material considerations".

*Development Plan policy*

4.100 Many of the Development Plan policies demonstrate the importance that the relevant local planning authorities (and the communities they represent) place on maintaining and improving the rights of way network, and on encouraging walking and cycling as non-motorised sustainable transport options. The policies of each of the local planning authorities which the Ramblers consider relevant are briefly set out below.

4.101 *Brentwood Borough Council policy GB27 Access to the Countryside:* "The Council will safeguard the existence and amenity of rights of way including footpaths, bridleways, byways and minor rural roads and will, through its countryside management service and encouragement of local landowners, seek to improve access to the countryside through establishment and maintenance of footpaths and bridleways and through voluntary agreements to manage green belt land on or near the rural-urban fringe."

4.102 *Castle Point Borough Council Policy RE12 – Public rights of way:* "The Council will encourage the provision of a high-quality network of public rights of way which are accessible to people with disabilities and will seek the inclusion of such facilities within appropriate development schemes. Particular encouragement shall be given to the provision of public bridleways, except where this would prejudice the interests of walkers and other users of existing public footpaths. All public rights of way identified on the definitive map will be safeguarded, improved and extended where possible."

4.103 *Colchester Borough Council policy TA2 – Walking and Cycling:* "The Council will work with partners to promote walking and cycling as an integral and highly sustainable means of transport. Regional and rural links, including national cycle routes, will be improved and better connected with local destinations. The design and construction of facilities and infrastructure will be improved to make walking and cycling more attractive, direct and safe. Quality and convenient pedestrian crossings will be promoted to facilitate safe and direct movement across busy roads." *Policy DP17: Accessibility and Access:* All developments should seek to enhance accessibility for sustainable modes of transport, by giving priority to pedestrian, cycling and public transport access to ensure they are safe, convenient and attractive,

and linked to existing networks. Proposals for development shall incorporate satisfactory and appropriate provision for: (i) Pedestrians, including disabled persons and those with impaired mobility; (ii) Cyclists, including routes, secure cycle parking and changing facilities where appropriate; (iii) Public transport and measures that reduce dependency on private vehicles; (iv) Linkages to networks as appropriate including the development of new pedestrian and cycle paths and the development of transit corridors in north and east Colchester; (v) Servicing and emergency vehicles."

- 4.104 *East Hertfordshire District Council Policy CFLR3 Public Rights of Way:* "Proposals for development must not adversely affect any Public Right of Way and, where possible, should incorporate measures to maintain and enhance the Rights of Way network." *Policy RA1 Sustainable Transport* "To achieve accessibility improvements and promotion of sustainable transport in the district, development proposals should: ... (b) Where relevant, take account of the provisions of the Local Transport Plan; (c) Ensure that a range of sustainable transport options are available to occupants or users, which may involve the improvement of pedestrian links, cycle paths, passenger transport network (including bus and/or rail facilities) and community transport initiatives. These improvements could include the creation of new routes, services and facilities or extensions to existing infrastructure and which may incorporate off-site mitigation, as appropriate. In suitable cases the provision of footways and cycle paths alongside navigable waterways may be sought, along with new moorings, where appropriate. The implementation of car sharing schemes should also be considered; (d) Ensure that site layouts prioritise the provision of modes of transport other than the car (particularly walking, cycling and, where appropriate, passenger transport) which, where feasible, should provide easy and direct access to key services and facilities; ... (f) Protect existing rights of way, cycling and equestrian routes (including both designated and non-designated routes and, where there is evidence of regular public usage, informal provision) and, should diversion prove unavoidable, provide suitable, appealing replacement routes to equal or enhanced standards".
- 4.105 *Harlow District Council Policy L13 Public Rights of Way:* "The existing network of definitive public rights of way within Harlow will be safeguarded. New footpaths, bridleways and cycleways will be required as part of new developments, to link with existing routes outside and within the town's boundary, and to provide better access to the surrounding countryside and areas of woodland within the town. Proposals for new or the enhancement of existing public rights of way will be required to meet the highest standards of design, accessibility and personal safety."
- 4.106 *London Borough of Havering Policy DC22 Countryside Recreation:* "Opportunities for informal recreation in the countryside will be increased by: the improvement of the public right of way network including links to the urban area"; *Policy TR3a – Provision for Walking:* "Where practicable all developments will be required to link with existing footpath and public rights of way networks and provide convenient, safe, attractive and direct routes for walking. Where appropriate, development should also improve links to and between pedestrian routes and public transport facilities, and support pedestrian priority measures."; *Policy TR4 – Safeguarding and Improving*

*Public Rights of Way:* "Where development affects an existing public right of way, planning permission will be refused unless the development can accommodate the definitive alignment of the path. A formal diversion providing a safe, attractive and convenient alternative may be considered where appropriate. Where opportunities exist the improvement of existing routes and the creation of additional links in the network of public rights of way and cycle tracks will be sought."

*National policy*

- 4.107 With regard to the revised NPPF, the Ramblers consider that there are a number of policies which make clear the Government's intention for the PROW network to be protected and enhanced, and for walking (as a means of sustainable transport) to be encouraged.
- 4.108 Paragraph 98 of the revised NPPF states that: "Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails."
- 4.109 Paragraph 91(c) states that: "Planning policies and decisions should aim to achieve health, inclusive and safe places which: ... (c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling."
- 4.110 In Chapter 9 '*Promoting Sustainable Transport*', paragraph 110 states: "Within this context, applications for development should: a) Give priority first to pedestrian and cycle movements, both within the scheme and within neighbouring areas... b) Address the needs of people with disabilities and reduced mobility in relation to all modes of transport; c) Create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards".
- 4.111 Paragraph 3.1 of the NPSNN makes clear that: "The need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail users."
- 4.112 The Government's policy on "sustainable transport" is then set out at paragraphs 3.15 – 3.18 of the NPSNN, which at paragraph 3.16 states: "As part of the Government's commitment to sustainable travel it is investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking across the country."
- 4.113 Section 5 of the NPSNN provides guidance on how the potential impacts of development schemes involving national networks should be considered. In

relation to 'Land use including open space, green infrastructure and Green Belt', under the heading 'mitigation', the NPSNN states: "Where green infrastructure is affected, applicants should aim to ensure the functionality and connectivity of the green infrastructure network is maintained and any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space, including appropriate access to new coastal access routes, National Trails and other public rights of way". It goes on to say "Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent."

4.114 The Department for Transport's *Cycling and Walking Investment Strategy 2017*<sup>62</sup> ('CWIS') is a clear policy recognition of the national importance of encouraging walking and cycling. The overarching "ambition for England" is to "make cycling and walking the natural choices for shorter journeys, or as part of a longer journey"<sup>63</sup>. This national policy also recognises the clear health benefits associated with walking and expresses a desire that "more people...have access to safe, attractive routes for cycling and walking by 2040".

4.115 Paragraph 1.9 of the CWIS states: "Realising our ambition will take sustained investment in cycling and walking infrastructure. It will take long-term transport planning and it will take a change in attitudes – amongst central Government, local bodies, businesses, communities and individuals. Walking and cycling should be seen as transport modes in their own right and an integral part of the transport network, rather than as niche interests or town-planning afterthoughts. We need to build a local commitment together to support this national strategy."

4.116 The CWIS sets out a number of aims that the Department for Transport seeks to deliver by 2040, including: streets where cyclists and walkers feel they belong, and are safe; better connected communities; rural roads which provide improved safety for walking and cycling; behaviour change opportunities to support increased walking and cycling; better integrated routes for those with disabilities or health conditions; and a wider green network of paths, routes and open spaces<sup>64</sup>.

---

<sup>62</sup> OBJ 148 APP7

<sup>63</sup> OBJ 148 APP7 p3

<sup>64</sup> OBJ 148 APP7 p4

*Local policy*

- 4.117 *ECC's ROWIP*<sup>65</sup>. The objectives ECC ROWIP's objectives include: "To reduce fragmentation in the public rights of way network; to improve accessibility on the public rights of way network; to promote safety; to promote improved health and quality of life through the use of the public rights of way network."
- 4.118 *Thurrock Council's ROWIP*<sup>66</sup>. The key aims of the ROWIP include: "the delivery of a safe and accessible network of footpaths, bridleways and byways and to encourage routes and facilities that are accessible and usable for all.
- 4.119 Policy 15 of the *Essex Transport Strategy* states: "The County Council will promote walking and use of the Public Rights of Way network by: promoting the benefits of walking; facilitating a safe and pleasant walking environment that is accessible to all; improving the signage of walking routes; ensuring that the public rights of way network is well maintained and easy to use by walkers, cyclists and equestrians".
- 4.120 The *Essex Walking Strategy* states that the overarching vision of the County Council is to create an environment that encourages walking by considering the needs of pedestrians first. In support of this vision, a number of objectives will be pursued: to promote walking as a leisure activity for residents and visitors; to encourage walking for shopping trips and to leisure activities; to improve pedestrian road safety; to address the needs of disabled, mobility and sensory impaired people within the pedestrian environment; to maintain, enhance and extend the Public Rights of Way network, and ; to maintain and enhance the environment adjacent to the footway.
- 4.121 The Ramblers object to 30 of NR's current individual crossing proposals. The Ramblers have maintained these objections both on grounds (i) that there is a lack of justification to close the crossing and divert the relevant public rights of way and (ii) that the alternative routes being provided are not sufficient, in terms of their suitability and convenience for the existing users of the rights of way that currently traverse the level crossings.
- 4.122 In short, the Ramblers consider that these alternative routes will be used by less people, or will not be used at all, resulting in fragmentation of, and loss to, the rights of way network. This will, in turn, discourage people from walking – both for leisure and for non-leisure trips (depending on the specifics of the crossing/alternative route's location).
- 4.123 The Ramblers consider that the Order conflicts with those policies that seek to maintain and safeguard the rights of way network, including: Brentwood Borough Council, Policy GB27 (for crossings E28 and E29); Castle Point Borough Council, Policy RE12 (E30 and E31); East Hertfordshire District

---

<sup>65</sup> OBJ 148 36 APP1

<sup>66</sup> OBJ 148 37 APP2

Council, Policy CFLR3 and TRA1(f) (H05); Harlow District Council, Policy L13 (E02); Tendring District Council, Policy TR4 (E43, E45, E46 and E56). In addition, the proposal conflicts with paragraph 98 of the NPPF, objective 4 of the ECC ROWIP and the objectives of the Essex Walking Strategy.

- 4.124 A number of the local and national policies seek not only to maintain the rights of way network but to improve and enhance it, where this is possible or appropriate. It is submitted that the Order conflicts with the following local and national policies; Castle Point Borough Council, Policy RE12 (E30 and E31); East Hertfordshire District Council, Policy CFL43 (H05); London Borough of Havering, Policy DC22 (HA03 and HA04); Tendring District Council, Policy TR4 (E43, E45, E46 and E56); NPPF, paragraph 98; NPSNN, paragraph 5.180 and 5.184; the objectives of the Essex Walking Strategy.
- 4.125 It is considered that the Scheme will discourage walking and is therefore in conflict with the following policies which seek to encourage walking: CBC, Policy TA2 (E41, E51 and E52); Tendring District Council, Policy TR3a (E43, E45, E46 and E56); NPPF, paragraphs 91(c) and 110(a); NPSNN, paragraph 3.16; the overarching ambition of the CWIS; ECC ROWIP, objective 8; Essex Transport Strategy, Policy 15; and the overarching ambition and objectives of the Essex Walking Strategy.
- 4.126 Some of the alternative routes proposed by Network Rail raise safety issues for walkers who are being routed onto and alongside roads. Both local and national policy makes specific reference to a policy desire to make walking routes safe. It is submitted that some of the proposals are in conflict with CBC policies TA2 and DP17 (E41, E51 and E52); Tendring District Council, policies TR3a and TR4 (E43 and E56); NPPF, paragraph 91(c) and 110(c); CWIS, paragraph 1.6 and 1.11; ECC ROWIP, objective 7; Thurrock ROWIP, key aim 1; Essex Transport Strategy, Policy 15; and, the general aims of the Essex Walking Strategy.
- 4.127 A number of the proposed alternative routes involve the introduction of significant numbers of steps or create a lengthy diversion. Both the ECC and Thurrock ROWIP policies specifically refer to a desire to improve accessibility on the rights of way network. Similarly, the Essex Transport Strategy (Policy 15) intends to promote walking and use of the public rights of way network by inter alia facilitating a walking environment that is "accessible to all" and the Essex Walking Strategy seeks to "address the needs of disabled, mobility and sensory impaired people within the pedestrian environment". Where the proposals may have an adverse impact upon accessibility they would appear to be in conflict with these policies.
- 4.128 The Ramblers do not agree with Network Rail's approach to planning and policy matters. Where a local plan policy seeks enhancements or improvements to the PROW network (for example: Brentwood Borough Council Policy GB27 ("improve access") or Castle Point Borough Council Policy RE12 (all PROW on the definitive map to be "safeguarded, improved and extended where possible") the *purpose* of the Order is irrelevant to considering whether the Order *proposals* are in compliance with these local plan policies. The focus should instead be on the *effects* of the Order and



how that aligns with local plan policies which address the public rights of way network and impacts on it.

- 4.129 The Ramblers submit that the test found in s5(6) is irrelevant when considering whether or not the proposals comply with local plan policies. These local planning policies may require more, in substance, than the s5(6) test. As a result, it is quite possible for NR's proposals to, at one and the same time, meet the s5(6) test but fail to align with local planning policy. Neither the s5(6) test, nor the Guidance given with regard to that test, is "planning policy" and so the test is irrelevant for purposes of considering the Order's compliance with planning policy.
- 4.130 It is of course quite possible for the local planning policies in different areas to have different requirements – with some being more onerous than others. This represents different local priorities in the areas affected. The fact that the Order impacts on such a large number of local planning areas, should not be a reason for Network Rail not to consider how the proposals align with each areas' planning policies.
- 4.131 Network Rail's assertion that connectivity will be maintained through the provisions of upgrades and new additions to the surrounding PROW network and that its proposals comply with the NPPF and policies set out within the adopted Local Plans and transport plans, is not accepted. Connectivity will not be maintained through the Order proposals and the proposals do not appear to comply with various planning policies at either local or national level.
- 4.132 The Ramblers consider that the proposed diversion of public rights of way will have a material adverse effect on the rights of way network and, therefore, that they are not acceptable in terms of local and national policies.
- 4.133 The Ramblers submit that Network Rail has not provided a robust analysis of (i) the extent to which the Order complies with relevant planning policies and (ii) where any conflict with policy exists, if/how that conflict is outweighed by other considerations.
- 4.134 Mr De Moor provided insightful evidence about the significant public health benefits associated with walking, as an accessible form of physical activity. The Department for Transport's own CWIS demonstrates a national policy ambition to "*make cycling and walking the natural choices for shorter journeys, or as part of a longer journey*". The Ramblers consider that the effect of the proposed diversions will be to discourage walking. These proposals are, therefore, contrary to the Department for Transport's own policy.
- Road safety*
- 4.135 The Ramblers consider that the RSAs carried out by Network Rail are not fit for purpose. The 'overseeing organisation' for these RSAs was not the relevant highway authority, (as required by HD19/15) but Network Rail itself. There has been no separation between the promoter of the scheme

and the body providing oversight; Network Rail was effectively overseeing itself throughout the RSA process from design of the RSA brief to the delivery of the assessment. Although the RSAs appeared to have been shared with the relevant highway authorities at the consultation stages, highway authorities were not involved in the process in the manner envisaged by HD19/15.

- 4.136 Further, Ms Tilbrook was a member of the project design team but had signed off and approved the Essex Stage 1 RSA<sup>67</sup> contrary to the requirements of HD19/15 which required the design team to be independent of the audit team. There must be doubt as to the independence of the audit team which carried out the RSAs.
- 4.137 Furthermore, there was limited information made available to the auditors; data for traffic volume, traffic speed, non-motorised user flows and road collision data was not available to the auditors<sup>68</sup>. Network Rail's position is that this data was considered outside the RSA process and will be incorporated into any Stage 2 RSAs undertaken at detailed design. However, consideration has to be given to whether the proposed alternative routes are safe for public use based on the limited Stage 1 RSAs already undertaken. This additional information should have been made available to allow a full assessment of road safety to be undertaken.
- 4.138 The timing and duration of site visits set out in the RSAs gives rise to doubts as to the adequacy of each site inspection. The back to back site visits in relation to E41 and E45<sup>69</sup> and the timing of those visits raises reasonable doubts as to the adequacy of each site inspection and only further supports the Ramblers position that no weight should be placed on the RSAs.

*Equality Act 2010*

- 4.139 The Scoping Report produced in August 2016, the Equality and Diversity Overview Report produced in September 2018 and the DIAs undertaken for specific crossings were not disclosed as Core Documents prior to the inquiry and were only submitted following a request made by the Ramblers for their disclosure. However, the findings of the Scoping Report and individual DIAs in relation to each crossing were summarised within the relevant crossing-specific part of Ms Tilbrook's proof of evidence. The non-disclosure of these documents suggests that Network Rail has little regard to the Secretary of State's obligations to carry out his PSED under section 149 of the Equality Act 2010 when determining whether or not to make the Order.
- 4.140 The Ramblers believe that Network Rail appear to have assumed that the Secretary of State could, or would, be satisfied that his PSED had been met, simply by relying on Network Rail's assurances that it had carried out a proper DIA process in order to comply with its (Network Rail's) own PSED,

---

<sup>67</sup> NR16 Report 367516/RPT016 revision B issue and revision record page

<sup>68</sup> Ibid, page 1

<sup>69</sup> NR32/4/2 Appendix D

such assurances being provided through Ms Tilbrook's evidence. However, the PSED duty is 'non-delegable' with each duty holder having to arrive at his or her own conclusions as to whether the duty has been discharged.

- 4.141 There are a number of areas of concern with regard to the rigour and scope of the assessment made by Network Rail with regard to the discharge of the PSED; (a) road safety risks, (b) accessibility constraints; and (c) limited data sources.
- 4.142 As regards road safety risks, section 3 of the Scoping Report and section 2 of the Equality and Diversity Overview Report address the "at risk groups" and identifies the "potential issues associated with level crossing closures and the groups likely to be affected by those issues". This assessment of "at risk groups" helped to frame the crossing-specific assessments of whether there would be any potential impacts on persons with protected characteristics for the proposals in the Order. This crossing-specific assessment led to a decision as to whether a crossing-specific DIA was required. Although these sections deal with user safety at the level crossing and how associated safety risks at level crossings can disproportionately affect people with particular protected characteristics, there is inadequate consideration of the safety risks that "at-risk" groups would be exposed to when walking along roadsides where the proposed alternative route will direct users alongside or across roads.
- 4.143 Secondly, whilst the Overview Report and Scoping Report both recognise that accessibility challenges can arise if a level crossing is replaced by a bridge, underpass or diversion which does not fully accommodate the needs of all those using it, it appears that current restrictions on accessibility of the level crossings (such as the presence of stiles, uneven paths or approaches) were unduly relied upon as a basis for not carrying out DIAs for a number of crossings. The potential for a number of Network Rail's proposed diversions to increase accessibility constraints for protected characteristics groups (most notably, people with disabilities and older people) has not been fully assessed.
- 4.144 Finally, significant reliance has been placed on the 9-day camera census to document users with protected characteristics who may be affected by the proposals. This census will, however, only document users with visible disabilities. It will not document the proportion of users who have non-visible physical disabilities or mental disabilities. Furthermore, the surveys used for the two rounds of public consultation did not ask consultees whether they considered themselves to fall within a protected characteristic group. There does not appear to have been an appropriate assessment of the potential impacts on users with protected characteristics who would not have been identified through these evidence bases.
- 4.145 It is accepted that DIAs should not be unduly burdensome on public authorities but should rely on a proportionate evidence base to the matters at hand. It is also accepted that the key question is not whether or not a DIA has been carried out per se, but whether "due regard" has in fact been had to the specified matters in section 149 of the 2010 Act (whether through a DIA or not). The Ramblers are not convinced that Network Rail

has fully and objectively considered the impacts of the Order proposals on protected characteristics groups.

- 4.146 As a result, the Ramblers do not consider that "due regard" can be had to the specified matters in section 149 of the Equality Act 2010 and that the Secretary of State cannot be confident in discharging his own duty by simply relying on the outcomes of the DIA Overview Report and individual DIA assessments.

### **The Case for Colchester Borough Council**

- 4.147 Section 38(6) of the PCPA04 confirms that, in deciding if to grant planning permission, any determination must be made in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan is the "Local Plan". Material considerations would include the Emerging Policy, the NPPF, the Essex Transport Strategy (ETS) and the Essex Design Guide. It is submitted that planning permission for the Scheme should be first determined having regard to the Local Plan before then considering the other material considerations.
- 4.148 Network Rail has only identified three policies within CBC's Local Plan as being of relevance; namely Policy TA2 Walking and Cycling, Policy ENV1 Environment; and Policy DP1 Design and Amenity. No mention is made of Policy TA1 which strives to enhance sustainable transport links. It is considered that Network Rail has failed to make an appropriate assessment of the proposed development against the Local Plan policies.
- 4.149 Policy ENV1 concerns the Environment. It prescribes, amongst others, that the Borough Council will conserve and enhance the natural environment and countryside. The proposed removal of, or harm to what the Borough Council considers to be "important" hedgerows as part of the proposals at E51 conflicts with Policy ENV1. It is to be noted that Network Rail has not proposed any compensatory, or mitigating, measures if these "important" hedgerows are to be removed.
- 4.150 Policy TA1 concerns accessibility and changing travel behaviour. The policy specifically provides that the Borough Council will improve accessibility by enhancing sustainable transport links and encouraging development that reduces the need to travel. Furthermore, TA1 confirms that sustainable transport will be improved to provide better connections between the communities and their needs.
- 4.151 In the supporting text to TA1 it is confirmed that "good accessibility means that the community can access their needs (e.g. shopping, schools, employment) without always needing a car". Furthermore, the same guidance notes that "improving accessibility and reducing car dependence helps to improve equality, reduce congestion and respond to the challenges with climate change and environmental sustainability. It also helps to promote a healthy and active population..."
- 4.152 The development proposed in respect of E41 Paget, E51 Thornfield Wood and E52 Golden Square does not accord with policy TA1. As regards Paget

crossing the proposal would take away an existing and well used transport link within the community. Not only would the crossing appear to facilitate the most direct route for many residents between the Co-Op to the north and those dwellings to the south of the railway line but also as a general amenity and leisure route through Wivenhoe. Furthermore, the alternative proposed is not considered to provide a better connection on the basis that it not only takes away an existing crossing but also diverts (more) people onto busier roads and, particularly, a restricted and potentially dangerous route along the High Street bridge.

- 4.153 Policy TA2 concerns the promotion of walking and cycling within the Borough. This policy promotes walking (and cycling) as a highly sustainable means of transport. Whilst the proposed development concerns the operation of the railway, the impact of the proposal is on those who currently seek to use the crossing point.
- 4.154 Policy TA2 further confirms that the design and construction of facilities and infrastructure will be improved to make walking and cycling more attractive, direct and safe. Furthermore, although specific reference is made to the town centre of Colchester, it is not unreasonable to suggest that TA2 seeks to provide excellent walking and cycling connections into and through all urban connections within the Borough. The guidance notes to TA2 explain its rationale which sets out that "people are less likely to walk to a local shop or bus stop if the pedestrian access is poor or appears threatening".
- 4.155 It is considered that policy TA2 is not met in respect of the proposal at E41 as the removal of the existing crossing takes away an existing transport link. It is highly doubtful that any proposal could further improve connectivity within the town of Wivenhoe. The diversion is not direct and adds, in an urban context, significant journey time. Furthermore, the proposed alternative routes are either up roads with unmade surfaces or via busier vehicular routes. Neither are satisfactory.
- 4.156 As regards E51 and E52 – the diversions in both instances are considerable and in the order of (and in one case in excess of), one kilometre. This does not render the (alternative) route direct. The diversionary routes require pedestrians to walk along roads used by vehicular traffic with, in some cases, undesirable sight lines. Therefore, apparently the closure of these routes will lead to less direct and potentially unsafe diversions. Furthermore, owing to the length added it is doubtful that the closures will make walking more attractive.
- 4.157 Policy TA3 concerns public transport and strives to promote sustainable travel behaviour. Policy TA4 concerns roads and traffic. Again, TA4 confirms that priority should be given to sustainable development; the explanatory notes state "growing levels of car use and congestion are having a negative impact on all [urban areas]". The proposed closure of E41, E51 and E52 may undermine sustainable travel behaviour and, instead, lead people to decide to either not walk at all or use a private motor car as alternative.
- 4.158 Policy DP1 concerns design and amenity. Within policy DP1 there are 7 criteria that new development should meet. Of note, criterion (iv) confirms

the creation of a safe and secure environment. Whilst the closure of a crossing over the railway network is accepted to negate any risk from using the same, that risk may simply be transferred elsewhere. Furthermore, the proposed alternative routes are over land with steeper gradients, unmade surfaces and roads used by vehicular traffic. It is therefore doubtful whether the alternatives do facilitate the creation of a safe and secure environment.

- 4.159 Criterion (iii) of DP1 provides that existing public and residential amenity should be protected; the loss of the crossings would cause detriment to the amenity of the public as a whole by closing existing and well-used crossing points. Furthermore, as no specific design details have been put forward by Network Rail, it is not possible to determine whether the proposed development would comply with local or national plan policy regarding design.
- 4.160 Transport policy in Essex is contained within the Local Transport Plan (LTP). The current LTP, the Essex Transport Strategy (ETS), was adopted in 2011 and states that; "a transport system which supports sustainable economic growth and helps deliver the best quality of life for the residents of Essex." An effective transport system is integral to peoples' daily lives; it underpins business and commerce; provides access to work, education and training, essential services and leisure activities; and enables people to make the most of opportunities as they arise.
- 4.161 Policy 4 of the ETS concerns public transport and confirms that ECC will work in partnership with train operating companies and Network Rail to improve rail services. However, no quantitative evidence has been given of improvements which will be brought to the rail services offered simply by the closure of the crossings within the Borough.
- 4.162 Policy 5 of the ETS concerns connectivity to support a vibrant, successful and sustainable future for Essex and aims to encourage walking or cycling "as important to reducing traffic congestion, as well as improving health and reducing emissions of CO<sub>2</sub>. Improving the pedestrian environment is also a significant component of wider initiatives to revitalise and regenerate our town centres". Emphasis is placed on walking and cycling as a means of getting from one place to another. The long diversionary routes envisaged for E51 and E52 are contrary to this policy.
- 4.163 Policy 8 seeks to promote sustainable travel choices and to promote better linked walking and cycling routes with the public rights of way network and improving crossing facilities. The removal of the means of crossing the railway line does not amount to the improvement of the network. Nor does the removal of a crossing ensure that the links with the PROW network are improved. It is not considered that the proposals are compliant with ETS Policy 8.
- 4.164 The revised NPPF sets out 3 overarching objectives in the delivery of sustainable development; an economic objective, a social objective and an environmental objective. Accordingly, the benefits that may accrue to the applicant to permitting the closure of various crossings and the associated

operational efficiency which would result needs to be balanced against the public benefit (or dis-benefit) of that development.

- 4.165 Network Rail does not appear to place any weight upon the amenity which the public derive from being able to cross the railway. Paragraph 110 of the NPPF confirms that application for development should "...(a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport..."
- 4.166 In accordance with the NPPF, pedestrian and cycle movements should have priority over any other forms of transport. In respect of those "other forms of transport" put simply, priority is then given to public modes of transport (i.e. rail and bus) before other modes. It is doubtful whether the needs of pedestrian or cyclists are being put first by this Scheme; considerable detriment to pedestrians (and potentially cyclists) arises from what appears, at its very highest, to give limited/modest benefit to the rail network.
- 4.167 However, there is no immediate benefit that the Applicant identifies from closing the crossings now (i.e. to facilitate a more frequent rail service or larger/faster trains). CBC therefore believe that the proposal does not align with Paragraph 110 of the NPPF and may be viewed as premature. Whilst it is acknowledged that Network Rail may seek to make improvements to branch lines in the future, no assurances are given. Moreover, at no point does the Applicant "point to" how closure of a specific crossing is or will benefit a development that will or is likely to come forward in the future.

### **The Case for Essex County Council**

- 4.168 Transport policy in Essex is contained within the LTP. The current LTP, the ETS, was adopted in 2011 and seeks to promote "a transport system which supports sustainable economic growth and helps deliver the best quality of life for the residents of Essex."
- 4.169 An effective transport system is integral to peoples' daily lives; it underpins business and commerce; provides access to work, education and training, essential services and leisure activities; and enables people to make the most of opportunities as they arise.
- 4.170 To help achieve this vision five key outcomes have been identified that the transport strategy needs to deliver: (a) provide connectivity for Essex communities and international gateways to support sustainable economic growth and regeneration; (b) reduce carbon dioxide emissions and improve air quality through lifestyle changes, innovation and technology (c) improve safety on the transport network and enhance and promote a safe travelling environment (d) secure and maintain all transport assets to an appropriate standard and ensure that the network is available for use (e) provide sustainable access and travel choice for Essex residents to help create sustainable communities.
- 4.171 The delivery of the five LTP outcomes is guided by 15 ECC transport policies contained within the LTP. These policies set out how ECC will fulfil its

responsibilities for managing and improving transport in Essex, ensuring that economic growth is supported, the long-term well-being of Essex residents is supported, and the integrity of its local environment is protected. The policies show how the County Council intends to work with partners and stakeholders to deliver on its vision for transport.

4.172 LTP policies relevant to the consideration of Network Rail's proposals include:

Policy 3 Connectivity: Transport networks will be strengthened to support a vibrant, successful and sustainable future for Essex:

Policy 7 The Natural, Historic and Built Environment: The County Council will protect the natural, historic and built environment from the harmful effects of transport:

Policy 8 Asset Management: The County Council will protect the value of transport assets to enable the safe and efficient operation of the network;

Policy 9 Maintenance: The County Council will ensure that the highway network (including roads, footways and cycleways) is resilient, safe to use, and fit for purpose, especially during periods of adverse weather;

Policy 11 Road Safety: The County Council will work to reduce the incidence and severity of road traffic collisions on Essex Roads.

Policy 14 Walking and Public Rights of Way: The County Council will promote walking and use of the Public Rights of Way network.

4.173 It is the intention that the LTP policies are treated as a coherent whole. ECC has therefore considered Network Rail's proposals at each location in line with these policies to decide the most appropriate action in each case. The Council maintains its objection to seven of the crossings in the Scheme as they are not considered to provide suitable or convenient alternatives for current users.

#### *Road safety*

ECC's road safety assessment departed from using HD19/15 and instead made use of Road Safety GB *Walked Routes to Schools* guidance. It was the opinion of the assessors that insufficient evidence had been provided to them by Network Rail and by the internal instructing department for an RSA under HD19/15 to be carried out.

There is no tool available for assessing the safety of public rights of way and it was considered that the guidance found in *Walked Routes to Schools* offered a fair way of making such an assessment. However, a distinction is however to be made between a road safety assessment and an RSA. In relation to vehicular highway, the proper audit tool is HD19/15 and any Stage 2 RSA undertaken in relation to the Scheme will be expected to comply with HD19/15.



### **Inspector's conclusions on planning and policy matters**

- 4.174 The Scheme proposes a reduction in the number of at grade pedestrian and other crossings present in the Anglia Region by means of closure, diversion or downgrading. As such, the proposals are compatible with the EU Rail Safety Directive whereby Member states are required to seek safety improvements on railway networks where reasonably practicable to do so [4.14]. A reduction in the number of at-grade crossings on both main lines and branch lines across the Anglia Network will eliminate the risk of accident to users of the crossings and improve safety for users of train services.
- 4.175 The Scheme aims to increase the resilience of the Anglia Region network by a reduction in the number of crossings which pose a constraint on the delivery of a punctual timetable and which have the potential to delay services. The Scheme is compatible with the objectives of the NPSNN in terms of delivering a resilient railway network to provide safe and reliable routes to work and to reduce risk of accidents or injury to passengers, the railway workforce and those who come into contact with the railway [4.13]. The proposals for each projected closure would provide an alternative means by which those current users of the crossings to be closed could continue their journey, albeit by a different route. Section 5 of the NSPNN requires that where existing rights of way require amendment in consequence of proposed development, consideration needs to be given to the use and convenience of the existing right of way. In proposing alternatives which are considered to be 'suitable and convenient' for each of the public rights of way at issue, the Scheme accords with the principles of section 5 of the NPSNN [4.113].
- 4.176 The Scheme is consistent with the NPPF sustainable development objectives in seeking to improve public transport services through a more resilient railway network, contributing to economic growth in the region by removing constraints on the network and by maintaining access to the countryside on foot [4.5, 4.6].
- 4.177 Whilst the Scheme would result in public rights of way which cross the railway at-grade being diverted to other existing infrastructure to provide grade-separated means of crossing the railway, access into the countryside on foot and on horseback would be maintained. In a number of cases, the proposals seek to improve links within the public rights of way network. In developing the Scheme, consideration has been given to the likely impact upon the environment and nature conservation [4.11]; given the minor nature of the works involved and the limited impacts which the Scheme is likely to have, the proposals are consistent with paragraph 98 of the NPPF [4.7].
- 4.178 Paragraph 110 of the NPPF requires that applications for developments should give priority to pedestrian and cycle movements and to minimise conflict between pedestrians and vehicles. [4.8, 4.110, 4.165]. The development being proposed directly affects current pedestrian access over the railway but seeks to provide an alternative means by which that access

can continue, albeit on a different alignment and using different existing infrastructure.

- 4.179 There is clearly a balance to be struck between the requirement of Network Rail to operate a safe and resilient railway and the needs of the pedestrian for access into the countryside via the rights of way network without being put at undue risk whether from the railway or vehicular use of the carriageway on which a pedestrian may have to walk when being diverted. That balance is arrived at in giving consideration to whether the proposed alternative route is suitable and convenient for existing users of the railway crossing under section 5(6) of the 1992 Act. Accordingly, the proposals are consistent with paragraph 110 of the NPPF.
- 4.180 Consideration has been given to the likely impact upon the natural environment and the impact upon nature conservation. An Environmental Screening Request Report has been submitted from which it was concluded that an EIA was not required. In relation to the works which would be required to implement the Scheme, a Precautionary Method of Works has been produced and circulated to all planning authorities affected by the Scheme. The Scheme is compatible with Chapter 15 of the NPPF [4.12].
- 4.181 Whilst ECC maintained objections to the proposed closure of seven of the crossings at issue, it was acknowledged that the objectives of the Scheme were broadly compatible with the objectives of the Essex Transport Strategy [4.55]. No representations were made to the Scheme by Hertfordshire County Council, and the objectives of the Scheme are compatible with policy 10 of the Hertfordshire Transport Plan [4.55].
- 4.182 The protection and enhancement of the PROW network is recognised in both national and local planning policies. The CWIS recognises the importance of encouraging walking and cycling both as modes of sustainable transport and for the health benefits which flow from increasing such activity. Whilst the objectors consider that the proposed diversions are likely to discourage walking, the proposals maintain the ability of pedestrians to undertake journeys which require the crossing of the railway. As such, the proposals do not actively discourage use of the PROW network and are not incompatible with national and local policies which encourage such activity.
- 4.183 However, it is a matter of dispute between the parties as to whether a particular proposal would result in current users being deterred from using the rights of way network associated with a particular crossing. This is likely to depend upon the nature of the proposed alternative route being proposed and whether that alternative route is or is not suitable and convenient for existing users.
- 4.184 Of the 16 local planning authorities whose areas are affected by the proposals contained within the Scheme, only one raised an objection to the proposals in relation to its local plan policies. I consider that some weight can be attached to the absence of any representation being made about the compatibility of the Scheme with the Local Plan policies of fifteen of those authorities [4.67].

- 4.185 Of those planning authorities who raised objections to the Scheme, only CBC contended that the proposals were incompatible with policies set out in its Local Plan. CBC takes issue with the proposals relating to E41, E51 and E52 and policies TA2, TA3 and TA4 [4.150 to 4.157]. These policies seek to encourage sustainable transport, and whilst it may be a matter of debate as to whether the alternative routes would or would not discourage pedestrian use, the proposed alternatives provide a means by which a journey which currently involves the at-grade crossing of the railway could be undertaken by using grade separated infrastructure. In this respect, the proposed alternatives are not incompatible with CBC's transport policies as the alternative routes being proposed would maintain pedestrian access over the railway, albeit on a different alignment.
- 4.186 The objectors also consider that the proposed closures should be considered in the context of the policies set out in the local plan published by each of the local planning authorities and where those closures conflict with local policies, they should be removed from the Order. However the approach to be taken in determining whether the proposals are consistent with national and local planning policy is to consider whether the objectives sought to be achieved by the Order ('the proposals') are consistent with those policies and not to determine whether each and every proposed alternative route is consistent with those policies.
- 4.187 I consider that the proposals are consistent with the NPPF, with national and local transport and environment policy.
- 4.188 In relation to each of the crossings at issue, whether each of those crossings should be closed is a matter to be determined following an assessment as to whether the proposed alternative routes provide a 'suitable and convenient' alternative for existing users of the crossings. Whilst the test set out in s5(6) of the 1992 Act has to be satisfied in relation to each of the alternative routes being proposed, the Ramblers submit that the s5(6) test is not "planning policy" and is therefore irrelevant in determining whether the proposals in the Scheme comply with planning policy.
- 4.189 In my view, when contemplating whether under s1 the Scheme is compatible with national and local transport and environment policy, it is not necessary to give consideration to whether each of the crossings in the Order are compatible with those policies. Whilst the section 5(6) test is not planning policy, it forms the second part of the two-stage process in relation to the Order. I consider it highly likely that if the proposed alternatives are not considered to be 'suitable or convenient', they would not be compatible with local policies aimed at promoting sustainable travel or those aimed at encouraging the public to engage in walking for recreation and exercise as there will be some aspect of the proposed alternative which may discourage such activity, whether through factors such as length, gradient, safety or accessibility.
- 4.190 It is not disputed that the RSAs conducted by Network Rail were not overseen by the relevant highway authority, as required when an RSA is conducted under HD19/15 [4.82, 4.140]. The audit briefs were prepared by

the consulting engineers with Network Rail assigning to itself the role of overseeing organisation. Whilst the highway authorities whose areas are impacted by the Scheme should have been the overseeing organisation, some weight can be attached to there having been no queries or objections raised by the highway authorities concerned in respect of how the RSA process was conducted [4.82].

- 4.191 I am not persuaded that that the approval of Revision B of RSA report 367516/RPT016 by Ms Tilbrook undermines the validity of the RSA as a whole [4.81, 4.137]. The only change between revision B of that document<sup>70</sup> and revision A<sup>71</sup> is a correction of the reference in revision A to an earlier RSA undertaken in December 2015<sup>72</sup> which is described as '354763/RPT222B' when that reference should have been '354763/RPT222A'. Although approval should perhaps have been given by a member of the audit team and not the scheme design team, given that there are no changes within the RSA itself, the position of the approver of the revision B report does not impact upon the content of that report which is unchanged from revision A.
- 4.192 Despite the shortcomings identified by the Ramblers, the RSAs were conducted in accordance with HD19/15 although the auditors acknowledge the limited information regarding traffic speed and traffic volumes [4.83, 4.137]. Consequently, they should be accorded weight and considered with regard to each crossing at issue as part of the overall assessment of whether the alternative routes being proposed satisfy the test found in section 5(6) of the 1992 Act.
- 4.193 Although the Ramblers contend that the DIAs undertaken do not give adequate consideration to the safety of 'at risk groups' faced with walking along roads as a result of Network Rail's proposals [4.142], the overview report provides a brief assessment of the issues likely to be encountered [4.91]. Whilst the descriptions are brief, the likely outcomes for certain groups are recognised. The accessibility of the proposed diversions is a matter to be taken into account as part of the overall assessment of whether the alternative routes being proposed satisfy the test found in section 5(6) of the 1992 Act.
- 4.194 Similarly, the potential for a proposed diversion to reduce accessibility [4.143] and the impact upon non-visible disabilities [4.144] are also matters that can be taken into account under the assessment carried out as to whether the proposed diversions would provide a suitable and convenient alternative for current users of the crossing. Matters such as the length, safety and accessibility of the proposed alternative are matters identified by the Secretary of State as being relevant considerations as to whether the proposed route would be a suitable alternative.

---

<sup>70</sup> NR16

<sup>71</sup> NR32/5

<sup>72</sup> Report 354763/RPT222A – erroneously identified in NR16 as 354763/RPT219

- 4.195 The scoping study, the overview report and the full DIAs conducted in relation to 14 of the crossings demonstrate that Network Rail has had due regard to its PSED obligations. These matters, along with an assessment of the alternative routes being proposed, can be taken into account by the Secretary of State as part of his own obligations under the Equalities Act 2010.
- 4.196 It is contended by CBC that in order to determine whether the scheme is compliant with planning policy and whether planning permission should be granted, a determination should be made in accordance with the local development plan unless material considerations dictate otherwise. The Council submits that this approach accords with both the Secretary of State's published guidance and with Section 38 (6) of the PCPA04 [4.147].
- 4.197 This approach was rejected by the Court in *In R (on the application of Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy & Climate Change* [2012] EWHC 46 (Admin) in relation to an application for deemed planning permission under the Electricity Act 1989. As the application for deemed planning permission in that case arose under section 90 of the 1990 Act, the findings of the Court are equally applicable in this case where the application for deemed planning permission is made under the same statutory provision.
- 4.198 Accordingly, if the Order falls to be made in whole or in part, planning permission for the works set out in the Schedule and to other ancillary works required to give effect to the Order will be deemed to have been granted under the provisions of s90 (2A) of TCPA90.

#### **Overall conclusion**

- 4.199 The Statement of Aims<sup>73</sup> sets out the benefits which are sought through the Scheme. I am satisfied that these benefits would arise from the Scheme. I am also satisfied that the Scheme accords with the NPPF, and with National and Local Transport and Environment policy.
- 4.200 I conclude that the making of the Order under s1 would be justified.

---

<sup>73</sup> NR04

## 5. Consideration of each crossing to be stopped up or diverted

### 5.1 **E01 Old Lane**

#### **Description of the Crossing**

- 5.1.1 Footpath EX/203/13 crosses the Liverpool Street to Ely railway line. The small town of Roydon lies to the south, to the north is open countryside on the Essex / Hertfordshire border, to the east is Harlow and to the west is Broxbourne. The level crossing is surrounded by agricultural fields.
- 5.1.2 Footpath EX/203/13 is an unsurfaced path which commences just off High Street, Roydon and runs in a generally easterly direction to the Harlow boundary and provides a link to other public footpaths which run along the River Stort and through the water meadows adjacent to the river.
- 5.1.3 The railway at this location comprises 2 lines of rails, carrying passengers and freight, with a maximum speed of 80mph. E01 is closed under a Temporary Traffic Regulation Order (TTRO) and currently has an ALCRM score of M13. When the crossing was open, there were stiles in the railway boundary fence and the ALCRM score was B8 due to insufficient sighting on the down line when looking towards a train approaching travelling in both the up and down direction.
- 5.1.4 E01, and Wildes level crossing, 240m to the east, both have insufficient sighting due to line curvature with users being warned of approaching trains by the train horn being sounded. However, it is not safe to have 2 whistle board crossings within close proximity, as users of one crossing may mistake the horn of a train approaching the other crossing and become confused, crossing when it is not safe to do so. When the issue of proximate crossings with whistle boards was first identified, Wildes level crossing was closed under a TTRO. However, the highway authority requested that the temporary closure be moved to Old Lane, as Wildes was a more convenient location for a crossing. This was done once the whistle boards had been positioned appropriately.

#### **Description of the proposal**

- 5.1.5 The Order would confer powers to permanently close the level crossing to all users and extinguish existing public rights of way over the level crossing. The proposed extinguishment would involve users approaching from the south heading north on FP EX/203/45 or heading northeast on FP EX/203/13 towards Old Lane level crossing, being diverted east onto FP EX/185/79 to cross the railway at Wildes level crossing. Users would then continue north of the railway on FP EX/203/44 to re-join the route of FP EX/203/13. The diversion will add an additional 150m to a journey along FP EX/203/13 to the River Stort.
- 5.1.6 FP13 between its junctions with FP EX/203/45 and FP EX/185/79 and FP EX/203/44 would be extinguished to prevent the creation of a cul-de-sac. Wildes level crossing is a footpath with stiles and is protected by whistle boards. Remaining level crossing infrastructure at E01 would be removed

and 1.8m high chain link fencing would be installed for a maximum length of 100m on each side of the railway.

### **The Case for Network Rail**

- 5.1.7 There are three pedestrian level crossings within close proximity on this section of the Liverpool Street to Ely railway and this part of the project is aimed at rationalising the number of north-south crossings of the railway. Reducing the number of public pedestrian crossings in this area will not eliminate risk but will reduce it and will result in cost savings because the maintenance and inspection programme for E01 would no longer be required.
- 5.1.8 E01 is currently closed under a TTRO because of its proximity to Wildes level crossing and the risk that users might mistake the audible warning given by an approaching train for E01 as a warning for Wildes crossing.
- 5.1.9 FP EX/203/13 crosses two watercourses to the north of the railway and the footpath has a greater propensity to flood than FP EX/203/44 served by Wildes level crossing. It is understood that ECC does not object to the proposal as the extinguishment of FP EX/203/13 north of the railway would remove the burden of maintaining the crossing points of two watercourses.
- 5.1.10 It is considered that the proposed diversion would not impact greatly on those who would wish to use E01 as the existing route via FP EX/203/13 is available less than the diversionary route provided by FP EX/203/44 and Wildes level crossing due to FP EX/203/13 being flooded at certain times of the year.
- 5.1.11 A DIA scoping exercise noted that due to issues with accessibility at the current crossing (notably the presence of stiles and long approaches across farmland) it is considered that there would be no reduction in pedestrian accessibility arising from the proposed diversion. A DIA was not considered necessary for this crossing.
- 5.1.12 The alternative route forms part of the existing network of footpaths in this area and maintains a north-south link over the railway to access the River Stort. The route is in a similar environment and although it is slightly longer than the existing, as it provides leisure walking and recreational access to the local footpath network, it is considered suitable and convenient in the context of the purpose and characteristics of the existing route.

### **Objections and representations**

#### **The Ramblers (OBJ 148)**

- 5.1.13 The Ramblers have no objection to the proposal to close E01 provided that Wildes Crossing, the next crossing east, remains open as guaranteed by Network Rail. Wildes is an appropriate alternative and probably less subject to flooding.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.1.14 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal. In relation to landowners or occupiers of the land crossed by that part of FP13 which is proposed to be extinguished, there will be some positive impact as the land will cease to be encumbered by a PROW.

#### **SOM4(b) Impacts on other users**

- 5.1.15 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.1.16 There is no evidence that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.1.17 Old Lane crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.1.18 As the proposed route runs through arable and pasture fields as does the current path, there would be no adverse impact upon agricultural land.
- 5.1.19 The proposed alternative route leading to Wildes crossing already exists and there is no indication that this discrete area contains any species of environmental concern. I conclude that there would be little or no appreciable impact upon the landscape.

#### **SOM4(g) Other environmental impacts including noise and health**

- 5.1.20 There is no indication that any impacts of these kinds would result from the proposed diversion.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.1.21 The proposal would require those who wished to cross the railway at E01 to undertake an additional 150m walk to reach the same point. Given that a



user approaching E01 from the west along FP13 will have walked over 1Km to reach the junction with FP44, the additional distance does not appear to be excessive or unreasonable.

- 5.1.22 The proposal would direct pedestrians to Wildes crossing where access over the railway is facilitated by stiles. Although not the ideal solution to access through the railway boundary fence, they are no more restrictive than existing users of E01 would have had to negotiate. Accessibility along the proposed alternative route footpath would not be adversely impacted by the proposal.
- 5.1.23 I consider that the Secretary of State can be satisfied that a DIA was not necessary regarding E01 and that the PSED has been discharged.

### **Conclusions**

- 5.1.24 Considering all the above, and all other matters raised in relation to E01, I conclude that the Secretary of State should include E01 within the order as the proposed alternative provides existing users of the crossing with a suitable and convenient alternative route.

## 5.2 **E02 Camps**

### **Description of the Crossing**

- 5.2.1 Roydon FP EX/185/75 crosses the Liverpool Street to Ely railway line. The small town of Roydon lies to the south, to the north is open countryside on the Essex / Hertfordshire border, to the east is Harlow and to the west is Broxbourne. The level crossing is surrounded by agricultural fields.
- 5.2.2 Footpath EX/185/75 is an unsurfaced path which commences at its junction with FP EX/185/72 at Mead Lodge Lock on the River Stort and runs over the water meadows south of the Stort crossing Canons Brook before reaching the railway line. From the railway, FP EX/185/75 runs in a generally south easterly direction to Roydon Lea Farm and continues south east to its junction with FP EX/185/122 at Roydon Lea golf course. Footpath EX/185/122 then runs in a generally north-easterly then south easterly direction and terminates on A1169 Elizabeth Way.
- 5.2.3 E02 is a user worked crossing with telephone (UWCT) with a footpath crossing with stiles (FPS) alongside it. The ALCRM score for the UWCT is A6 and for the FPS, B6. It is protected by whistle boards. Whistle boards are only effective between the hours of 0600–2359 because of the Night-time Quiet Period ('NTQP'). The railway at this crossing comprises two lines of rails and carries passengers and freight with a line speed of up to 80mph. A 9 day, 24-hour camera census of non-vehicular usage was undertaken in July 2016. This recorded 9 users over that period with the busiest day being Thursday 14 July 2016 when 3 pedestrians were recorded.

### **Description of the proposal**

- 5.2.4 It is proposed to close E02 to public users and extinguish existing public rights of way over the crossing. Private vehicular rights over the UWCT would be retained. Pedestrians heading south on FP EX/185/75 would be diverted either west to Wildes level crossing or east to Sadlers level crossing.
- 5.2.5 It is proposed to create a new unsurfaced east - west footpath in field margins from the point where FP EX/185/122 heads north to where FP EX/185/78 heads north. Footpath EX/185/75 leading from Roydon Lea farmyard north to the level crossing (approximately 270m) and the section from the level crossing to a point where it meets FP EX/185/181 (approximately 280m) would be extinguished.
- 5.2.6 Level crossing infrastructure associated with pedestrian use over E02 would be removed to prevent trespass on the railway.

### **The Case for Network Rail**

- 5.2.7 The proposals would enhance the PROW network in the area by creating a circular walk. Users wishing to travel to Mead Lock from Little Parndon using FP EX/185/122, would have two options open to them; either travel via Sadlers crossing and FP EX/185/181 or continue to travel in a broadly

westerly direction along the new unsurfaced footpath to FP EX/203/44, where users would turn north to cross the railway at Wildes crossing and then proceed north to FP EX/185/75 at which point they would continue to Mead Lock as if they had not been diverted. The maximum additional distance users would face would be 950m.

- 5.2.8 It was originally proposed that the public rights of way over both Camps level crossing and Sadlers level crossing would be extinguished, and it was proposed that users of Sadlers would be diverted to the underpass located to the east. This proposal would also have required the creation of a footpath to link between the underpass and FP EX/185/122 and FP EX/185/73.
- 5.2.9 The original proposal to close E02 and Sadlers crossing and the creation of a direct link to the underpass following the north side of Canons Brook would have enabled the removal of all the public footpaths in and around Roydon Lea Farm. It is acknowledged that the original proposal would have benefited the farm.
- 5.2.10 The original proposal would have required the headroom under the underpass to be increased to enable users to walk through without stooping. The existing headroom through the underpass is 1.5m with standing water present for much of the time. The Highway Authority would normally require headroom of 2.3m although this can be reduced to 2.1m for existing structures whilst being compliant with best practice guidance. The Highway authority may accept 1.75m headroom where it is not practicable to provide best practice clearances.
- 5.2.11 An assessment of the underbridge determined that to reduce the base of the underpass by at least 250mm and up to 600mm may have implications for the bridge structure and would worsen the existing poor drainage and would be difficult to resolve.
- 5.2.12 The proposal to use this underpass - and to extinguish the public rights of way over Sadlers - was therefore removed from the scheme. With the decision not to pursue this proposal, it was not possible to remove the public footpaths completely from Roydon Lea farmyard as there would be no alteration to that section of FP EX/185/74 which leads to Sadlers crossing.
- 5.2.13 Objections have been received on behalf of those with an interest in the farm on the basis that it is no longer proposed to utilise the underpass or extinguish all the footpaths at Roydon Lea Farm. Network Rail has, however, sought to incorporate the suggestions made by the landowners in respect of the proposed diversion of E02.
- 5.2.14 In addition to consideration having been given to the use of the underpass to the east of Sadlers crossing, two other options were considered. First, the closure of both E02 and the adjacent Sadlers crossing and diversion to Wildes Level Crossing. A new 2m wide unsurfaced footpath along field margins (approximately 715m in length) would be provided on the south

side of the railway linking existing footpaths EX/185/22 and EX/185/78<sup>74</sup>. Secondly, the closure of both E02 and Sadlers crossing and provision of a combination of the alternative routes considered<sup>75</sup>.

- 5.2.15 The alternatives initially considered could only have been taken forward if the underbridge to the east of Sadlers crossing could be made suitable for pedestrian users. As this was not considered feasible, none of these alternatives were pursued.
- 5.2.16 A DIA scoping exercise recommended that a full DIA was undertaken. The DIA concluded that due to the availability of an alternative route in the local area to cross the railway, the closure of E02 and the redirection of users along the proposed alternative is considered an appropriate solution.
- 5.2.17 The DIA also recommended that as the diversion routes incorporate level crossings with a lack of protective equipment (Wildes and Sadlers), consideration should be given to improving pedestrian safety at both these sites, for example the implementation of controlled pedestrian crossing systems. An audible warning of the approach of trains (Covtec) is provided at Sadlers crossing; at Wildes crossing where limited sighting is mitigated by whistle boards, the user is required to stop, look and listen for the approach of trains.
- 5.2.18 Whilst E02 would remain in use as a private occupation crossing if the Order was made, removal of the public pedestrian crossing would still meet the objectives of rationalising the level crossing estate as set out in the Anglia Level Crossing Reduction Strategy. There would therefore only be one crossing at this location rather than two, and management of that crossing could be tailored to the use being made of it. The removal of public rights from the crossing would also mean that future action can focus, solely, on the needs of the private user, as opposed to having to find a solution that works for both public and the private rights.
- 5.2.19 An intensive service operates between Liverpool Street and Cambridge and the train operator seeks to increase the frequency of the service; reducing the number of crossings and removing public use from E02 would reduce the risk presented the crossings in this area whilst maintaining access to the water meadows north of the railway and would create a new east – west link in the local network.
- 5.2.20 The new route to the south of the railway provides improved east west links between the footpath networks to the south east and south west of the crossing, giving footpath users continued flexibility in the way they access the footpath network within the area whilst retaining a means of crossing the railway. The alternative route also maintains the option to undertake a circular walk in the area. The proposed alternative routes will form part of the extensive network of footpaths in this area that access the River Stort.

---

<sup>74</sup> Blue route shown in NR32/2 tab 2 page 99

<sup>75</sup> Red route shown in NR32/2 tab 2 page 99

- 5.2.21 Users of the proposed alternative route would have to give due care and attention when crossing the farm access road. There were good sightlines both north and south along the access road at the points where the proposed alternative path would cross. It was not considered that the vehicular use of the access road would give rise to problems given the low level of pedestrian use of the crossing.
- 5.2.22 Given the low level of use of E02 and that the proposed path would be around 200m south of Roydon Lea Cottage and the existing level of screening around the cottage, the level of disturbance to the cottage would be limited.
- 5.2.23 The unsurfaced proposed route would be of a similar standard to the existing route and although it is longer, as it appears to be used primarily for leisure walking it is considered acceptable. It is not considered that the additional length will dissuade people from using the path network.

### **The Cases for the Objectors**

#### **David Naylor (OBJ 22)**

- 5.2.24 Mr Naylor made an objection in his own right but also gave evidence at the inquiry as part of the Ramblers case in his role as the footpath officer for Harlow.
- 5.2.25 The proposed alternative routes are approximately 2Km in length; although the proposed alternative to the east is along existing footpaths it still adds almost 1.5Km to a walk. Camps crossing will remain in place and it is difficult to see why the pedestrian crossing should not remain open for use. The path at Camps heads north-west to Mead Lock whereas the path at Sadlers heads north-east towards Parndon Lock.

#### **Christopher Camp (OBJ 69)**

- 5.2.26 The notices placed on site were not accompanied by all the plans necessary to show the proposed changes; the plans at Roydon Lea Farm showed the footpaths to be stopped up but not the alternative routes. The notices had not been served on the correct owners of the land.
- 5.2.27 The proposed route is far longer than the existing route which will be stopped up and walkers will be unduly inconvenienced. The alternative routes proposed by the landowners are of similar length to the existing routes and are no less direct and would be no less convenient for users.
- 5.2.28 The proposal would leave an awkward 'dog-leg' in the farmyard at Roydon Lea Farm; a more convenient route would be to direct these footpaths to Sadlers crossing along a route following Canons Brook, thus providing a more direct route to the River Stort.
- 5.2.29 The proposed new route would run in floristically enhanced field margins which are in a Higher-Level Stewardship ('HLS') scheme to the detriment of ground nesting birds. The proposed 2m-wide footpath within a 6m field

margin would require the extension of the field margins and reduce the area for the growing of crops.

- 5.2.30 The farm access road catered for between 12 and 100 wagon movements per day going to and from the concrete crushing plant. Although the movement of the wagons was slow, visibility at the alternative route was poor which may create problems for users with impaired hearing.

**Susan Clarke (OBJ 94)**

- 5.2.31 The proposed path would pass within clear view of the house, garden and paddock of Roydon Lea Cottage removing privacy; the house is not currently overlooked by any other building. The path would run within metres of the boundary of the paddock and concerns are expressed about people interfering with animals, particularly those with dogs.
- 5.2.32 The access road to the cottage and farm also serves as access to a company dealing in crushed concrete; there are many large vehicle movements along the road each day. This proposed route poses a high risk to walkers.

**Weldon Beesly (on behalf of the Camp family) (OBJ 133)**

- 5.2.33 The notices erected on site were not accompanied by plans necessary to show the proposed changes and the notices have not been correctly served on the owners of the land.
- 5.2.34 The proposed new footpath is far longer than the existing route and will cause unnecessary inconvenience to the user. The proposed stopping up will create an awkward dogleg in the middle of the farmyard.
- 5.2.35 The proposed path will run in floristically enhanced field margins which are entered in an HLS scheme which is not conducive to the wildlife conservation aims of the scheme.
- 5.2.36 The field margins are likely to be required to be extended to compensate for the 2m footpath which would reduce the area available for growing crops to the financial detriment of the farm.
- 5.2.37 The proposals would have a detrimental effect upon the residential enjoyment and value of Roydon Lea Cottage. The proposed path would require users to cross the farm access track which also serves as access to the nearby concrete crushing plant.

**The Ramblers (OBJ 148)**

- 5.2.38 E02 is an important connector to a number of local destinations for walkers. It provides a direct route between Roydon Lea and the canal lock at Mead Lodge near Hunsden Mill. This footpath is a section of a longer right of way/footpath between Harlow and the lock where walkers can join the Stort Valley Way (also at this point the Three Forests Way). E02 also provides a link to Eastern Mead and Hunstead Mead SSSIs.

- 5.2.39 The proposed diversion for E02 is clearly unsuitable due to its illogical and lengthy route. It proposes to take users to either Sadlers or Wildes crossings, both of which create a "zig-zag" journey if people are walking northwards to the lock and beyond. Whilst the diversion over Sadlers is shorter it is not a route that would be included when planning a Ramblers group walk in the area.
- 5.2.40 Mr Kenning accepted in cross-examination that "this route does seem a little bit odd" because a north-south connection was being replaced with an east-west route. Ultimately, the diversion is too long and inconvenient to be a sufficient justification to close the crossing.
- 5.2.41 Furthermore, the fact that a level crossing will remain for private use at E02 fundamentally undermines any "strategic" case for closure. The crossing will continue to be inspected and will still impact on the ability to bring about future enhancement schemes, or line speed increases (notwithstanding that the presence of Sadlers and Wildes crossings in close proximity on either side of E02 would similarly impact on such schemes). It seems illogical to continue vehicular use at this crossing but extinguish the right of way on foot. This is especially so when it seems that the crossing furniture necessary for private pedestrian access will need to remain at the crossing.
- 5.2.42 Moreover, users are simply being diverted to alternative level crossings. Apart from the technical "removal" of a public level crossing point at E02, there appears to be negligible safety benefits for users associated with this proposal. Nor has Network Rail properly considered alternatives, thereby failing to provide a robust case for closure. What is more, the telephone system will remain in place for private use. The Ramblers query why that telephone could not be made available for public use. With respect, Mr Kenning's evidence as to why this would not be achievable was not easy to follow.
- 5.2.43 Overall, the Ramblers consider that any additional costs required to maintain this public crossing point are clearly justified. Such investment would prevent the loss of this important and valued ROW.

#### **Paul Camp (OBJ 164)**

- 5.2.44 The notices put up around the farm are inaccurate and incomplete. The consultants engaged by Network Rail have repeatedly sent communications to deceased parents; however, it is admitted that the land is still registered in their names.
- 5.2.45 Suggestions put forward as alternatives for the proposed routes have been ignored. The proposals would reduce safety as only one crossing is being closed, pushing foot traffic to other crossings which are not as safe. The private vehicular crossing is being retained; presumably line speed will not be improved by the proposed change.
- 5.2.46 Sadlers crossing is the most unsafe of the three crossings; visibility is poor and water running in the brook masks the sound of approaching trains. An underpass to the east could be made available with small improvements to

the floor and ditch. The underpass would provide a more direct route between Harlow and the river. If the path which crosses at Camps ran alongside Canons Brook to the underpass foot traffic could be stopped at Camps and Sadlers.

- 5.2.47 The proposed path on the southern boundary of the farm is not acceptable; it would run in land which has entered into an HLS agreement; considerable compensation would be claimed for disturbance and loss. The proposed path also invades the privacy of the farmhouse and cottage. Crossing the drive will create a hazard for walkers and staff using the drive.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.2.48 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.
- 5.2.49 The proposal is likely to have a mixed impact upon the landowner. The closure of part of FP EX/185/75 from a point in the farmyard to its junction with FP EX/185/181 would reduce the burden on the land associated with the footpath; there will therefore be some benefit to the landowners in this respect. However, the landowners are disappointed that Network Rail has not carried through its original proposal to utilise the underpass to the east of Sadlers crossing and to close all the footpaths which converge within the farmyard.
- 5.2.50 The landowners object to the proposed east-west route which would provide a link between FP EX/185/122 and FP EX/185/78. It is claimed that the new footpath would be intrusive and disturb the privacy of those resident in Roydon Lea Cottage. Whilst the proposed footpath would run on slightly elevated ground, there is some existing screening around the cottage and the proposed new path would be located approximately 200m to the south of it. Although the Ramblers consider that use by one pedestrian per day demonstrates regular use of the existing footpath and crossing, I consider it unlikely that this level of use would lead to a level of intrusion which could not be mitigated by additional screen planting as suggested by Network Rail or by the compensation provisions of s28 of the 1980 Act.
- 5.2.51 It is claimed that the creation of a 2m footpath within the HLS stewardship margin will result in that margin having to be moved further into the arable field with a consequential loss in the productive capacity and viability of the land. Although the proposal may have an adverse impact upon the landowner's agricultural activities and may lead to a consequential loss from the HLS agreement, I do not consider that these are matters which could not be compensated for under s28 of the 1980 Act.



- 5.2.52 There would be no impact upon the ability of the landowners to access their property via E02 as the private vehicular rights over the crossing are undisturbed. The proposed east-west footpath will have an interface with the access road to Roydon Lea, but the nature of that interface will be a matter for detailed design and given the existing level of use, should not be a significant constraint on the ability of the landowners to access their property.

**SOM4(b) Impacts on other users**

- 5.2.53 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.2.54 E02 provides a link over the railway to the flood plain of the River Stort; as I found on my site visit, the ground is wet even in dry weather conditions and it is known that the line of FP EX/185/75 is occasionally flooded. The diversion of users to Wildes or Sadlers crossings will have little impact upon the risk of flooding in the vicinity of the river.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.2.55 Crossing E02 is in the vicinity of Eastern Mead and Hunstead Mead SSSIs. The proposal does not directly affect these sites and is therefore unlikely to have any adverse impact upon the features for which they have been so designated.

**SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.2.56 As noted above, the creation of the east-west footpath between FP EX/185/122 and FP EX/185/78 may lead to the reduction in the productive capacity of the adjacent fields if the 6m wide HLS strip is required to be relocated to accommodate the footpath. Any disturbance or loss arising may form the basis of a claim for compensation under s28 of the 1980 Act.

**SOM4(g) Other environmental impacts including noise and health**

- 5.2.57 There is no indication that any impacts of these kinds would result from the proposed diversion.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.2.58 For those pedestrians travelling to or from Harlow wishing to reach Mead Lock, the proposed alternative routes would entail an additional journey of around 950m at the most, not the 1.5Km contended for by Mr Naylor. Although this may appear to be a long diversion whether a user would take

the route via Wildes or the shorter alternative via Sadlers, it has to be borne in mind that any user will have travelled a not insignificant distance to arrive at the diversion point on FP Ex/185/122 or the junction of FP EX/185/75 and FP EX/185/74. From Mead Lock, users can undertake a journey east or west along the banks of the River Stort. Given that the likely use of E02 is likely to be recreational, the increased distance involved is unlikely to inconvenience most users.

5.2.59 The proposed east-west link path would run over land at a similar gradient to the part of FP122 as a field edge path in fields in arable cultivation. The proposed path would require users to cross the access road leading to Roydon Lea which is shared with heavy traffic making its way to the nearby concrete crushing plant. Users of E02 are currently required to stop, look and listen for the approach of trains and similar caution is likely to be required by users approaching the access road. Whilst crossing the access road would not be without risk, such risk can be mitigated with good design of the crossing point.

5.2.60 Whilst replacing a north-south crossing with an east-west link would seem counter-intuitive, the proposed path would facilitate the creation of a short circular walk in the area incorporating Wildes, Mead Lock and Sadlers which is not currently available.

5.2.61 The DIA Overview Report suggested that a full DIA should be undertaken. The proposed alternative routes via Wildes and Sadlers both involve negotiating stiles at the railway boundary as does the current crossing at E02; although stiles are not the least restrictive option for boundary furniture, the proposed alternatives routes across the railway would be no more restrictive for current users of E02. The choice of any boundary furniture required to facilitate crossing the access road will be a matter for detailed design and discussion between Network Rail, the highway authority and the landowner.

5.2.62 I consider that the Secretary of State can be satisfied that people with protected characteristics would not be disproportionately affected (over and above the effects likely to be experienced by the rest of the population) as a result of the proposed diversion. The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

## **Conclusions**

5.2.63 Considering all the above, and all other matters raised in relation to E02, I conclude that the Secretary of State should include E02 within the Order as the proposed alternative provides existing users of the crossing with a suitable and convenient alternative route.

### 5.3 **E04 Parndon Mill**

#### **Description of the Crossing**

- 5.3.1 E04 is located on the north-western fringe of Harlow, on the Liverpool Street to Ely railway line. The definitive map of public rights of way shows FP EX/185/73 as running in a north easterly direction crossing the railway and heading north over the River Stort at Parndon Mill, an arts centre, to join a byway. The River Stort is located approximately 50m north of the railway.
- 5.3.2 There is no trace of E04 on the ground and it is regarded by Network Rail as a 'sleeping dog' and has an ALCRM score of M13. The physical crossing is believed to have disappeared in the 1950s when the Harlow Development Corporation was developing the 'New Town'. There is no evidence of FP EX/185/73 on the north side of the railway and there is a section of the path that runs through a commercial site that is completely fenced off with no evidence of the footpath.
- 5.3.3 The railway at this crossing comprises two lines of rails and carries passengers and freight with a line speed of up to 80mph. As there is no trace of the crossing, no attempt was made to gather any user census data.

#### **Description of the proposal**

- 5.3.4 It is proposed to create a new unsurfaced footpath from where the existing FP Ex/185/73 meets the western boundary fence of the commercial site running south to Elizabeth Way. Public pedestrian rights would be extinguished over FP EX/185/73 from the western boundary of the commercial site, over E04 and to Parndon Mill Lane.
- 5.3.5 Those users wishing to travel in a north easterly direction from Little Parndon would follow FPs EX/185/122 and EX/185/73 until they reach the boundary fence of the commercial site. At this point they would turn south along the new footpath to Elizabeth Way. From Elizabeth Way users would travel east on the segregated footway of Elizabeth Way to Parndon Mill Lane then turn north east crossing the railway via the overbridge and on to Parndon Mill at the junction of EX/185/128 and EX/185/129 as if they had not been diverted. The total additional length of the proposed diversion is approximately 680m. The railway overbridge does not have a footway on it, and therefore users will walk in the carriageway at this point.

#### **The Case for Network Rail**

- 5.3.6 The proposal will address the long-standing issue of E04 being unavailable for use. Initially, it had been proposed to seek extinguishment of the right of way over the crossing, however the highway authority required the provision of an alternative route to retain connectivity in the network.
- 5.3.7 The ALCRM score of the crossing reflects its 'sleeping dog' condition. Diversion is the preferred option; there is insufficient sighting at E04 for the re-instatement of a crossing without the installation of an integrated MSL

system. It is highly unlikely that the ORR would permit the opening of a 'new' level crossing which was reliant on the protection of whistle boards.

- 5.3.8 A DIA scoping study concluded that, as there is currently no crossing infrastructure at this location and the crossing is currently closed, closure and redirection has the potential to improve accessibility at this location. Therefore, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.3.9 The alternative route would provide a link to the network of existing pedestrian facilities to the south of the railway via a new section of footpath. Although the proposed route is longer than using FP EX/185/73 via the crossing would have been, as the path is likely to be used for recreational purposes it is considered acceptable.
- 5.3.10 Two other options were considered; first, the extinguishment of FP EX/185/73 from its junction with FP EX/185/122<sup>76</sup>, an option which was discounted in favour of the proposed solution due to the increased length of road walking. Secondly, the extinguishment of FP EX/185/73 from the western boundary of the commercial site with a diversion to the east through Keir's development site<sup>77</sup> to meet Parndon Mill Lane; this option was discounted due to unknown timescales for delivery of the development, when the proposed solution could be implemented without affecting any future development.
- 5.3.11 A Stage 1 RSA recommended that the proposed diversion run along the footway to the north of Elizabeth Way and did not raise any issues regarding pedestrian use of Parndon Mill Lane. Automatic Traffic Count data was collected on Parndon Mill Lane<sup>78</sup> north of the junction with Elizabeth Way which showed an average 2-way daily traffic flow of 455 vehicles and 85<sup>th</sup> percentile speed of vehicles of 22.5mph where the posted speed limit is 50mph.
- 5.3.12 It is considered that the proposal will benefit the land occupied by Hanns Caravan Storage Ltd as both the definitive line of FP EX/185/73 and any rights over the path not shown on the definitive map would be extinguished under the Order. No other powers, or rights, are sought over the land in which Hanns Caravan Storage Ltd has an interest.
- 5.3.13 The proposed new footpath runs inside the western boundary of the former Harlow Rugby Club, a site now being developed by Kier Living Ltd for housing. The proposed footpath lies to the west of Keir's development plots 1 and 37 and it has been confirmed that the new footpath would not pass through the garage being constructed for development plot 1. There is a potential overlap between Order plot 40 - land required temporarily to construct the footpath - and the garage and two parking spaces/turning

---

<sup>76</sup> red route in NR32/2 at Tab 2, page 101

<sup>77</sup> NR32/2 at Tab 4, page 342

<sup>78</sup> NR32/2 at Tab 1

areas being developed<sup>79</sup>. However even if the full width of Order plot 40 in the vicinity of the garage is unavailable, that will not preclude the construction of the footpath itself. The timely construction, or occupation, of the Kier development would not be prejudiced by the proposed construction of the footpath.

- 5.3.14 It is acknowledged that there will need to be some regrading and reprofiling of the land in order to achieve a reasonable cross fall on the proposed footpath, and ramped steps may be required to accommodate the change in levels between the rear of the Kier site and FP EX/185/73. The exact details will be for detailed design, but it is considered that a suitable footpath can be created in this location.
- 5.3.15 The proposed footpath will run adjacent to, but not within Ram Gorse Wood which is protected by a tree preservation order (TPO). There are no proposals to remove, or fell, any of the trees subject to the TPO. At most, it may be necessary to lop low branches if required to ensure adequate headroom for those using the new footpath. It is considered that any such lopping can be carried out without the need for further consent from the local planning authority<sup>80</sup>.
- 5.3.16 It is considered that the proposed alternative route is suitable and convenient, having assessed road safety issues on Elizabeth Way and traffic levels on Parndon Mill Lane, when considered in the context of the purpose and characteristics of the existing route.

### **The Cases for the Objectors**

#### **Mr Glen Hann for Hanns Caravan Storage Ltd (OBJ 005)**

- 5.3.17 There is no PROW over the land. There is no public crossing at the point shown on the maps. The land has been fenced off from the railway for over 20 years with no means of crossing the railway being present. It is not known why Network Rail thinks there is a crossing at this location.

#### **Kier Living Ltd (OBJ 175)**

- 5.3.18 The proposed footpath does not consider the approved layout of the development as the garages and driveways of plot 1 and plot 37 appear to be impacted by it. The development is scheduled to take place over a three-year period commencing in July 2017. The site will be boarded and access to it carefully controlled. It will not be possible for a footpath to run alongside the site whilst the development is being constructed.
- 5.3.19 The proposed route of the footpath does not take into account the physical constraints of the site; it slopes significantly on its northern boundary and the footpath would run through or adjacent to a group of trees protected by a TPO.

---

<sup>79</sup> NR 177

<sup>80</sup> NR 178

## **Inspector's Conclusions**

### **SOM 4(a) The likely impacts on landowners, 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**

- 5.3.20 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.
- 5.3.21 Whilst Mr Hann may be correct in saying that his land has been fenced against the railway for at least 20 years, he is not correct in saying that there is no PROW through his land or over the railway; such a way is shown in the definitive map and statement. Nonetheless, the proposal would be of benefit to Mr Hann as it would extinguish any PROW in existence and would free his land of that burden.
- 5.3.22 I first visited the site in August 2017 shortly after construction work on the Kier site had commenced. At that time there was a gap between the security fence and Ram Gorse Wood on the approximate alignment of the proposed path. At the time of my last site visit, just after the inquiry had closed, the development had proceeded with the houses on plots 1 and 37 having been completed. Although the gap between the development site and the wood was narrower than it had been in August 2017, it appeared that there remained sufficient width between the garages and the wood for the proposed footpath.
- 5.3.23 The plan at NR 177 shows that the five-metre working strip for the creation of the footpath will overlap onto the parking space and garage allocated to development plot 37 although the footpath would only run adjacent to these areas. Neither the five-metre working area, nor the completed footpath would directly impact the land allocated to plot 1.
- 5.3.24 There is an overlap between the five-metre working area required for the construction of the footpath and development plot 37 and Network Rail is aware that the full width of the working area may not be available at this point. The restricted width should not prevent the construction of the path and any disturbance or loss arising could be addressed by the provisions regarding compensation.

### **SOM4(b) Impacts on other users**

- 5.3.25 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

### **SOM4(c) Impact on flood risk**

- 5.3.26 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.3.27 E04 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.3.28 It is not proposed to route the footpath within Ram Gorse Wood nor is it considered necessary to fell, top or lop any of the trees which are subject to the TPO. However, if pruning of overhanging trees was required to achieve sufficient headroom for pedestrians, any such works would be exempt from the prohibition on lopping as the deemed planning permission sought for operational development (such as the grading of the land and the provision of sloped steps) would bring such works within the ambit of Schedule 2 para 3(c) of the TPO.
- 5.3.29 It is unlikely that the proposed footpath would have any adverse impact upon the landscape of the immediate area.

**SOM4(g) Other environmental impacts including noise and health**

- 5.3.30 No matters were raised regarding this issue.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.3.31 The location of E04 suggests that its likely use if it were available would be by the public for leisure and recreation purposes. Although the arts centre at Parndon Mill might be a potential destination, no evidence has been submitted to suggest that anyone has sought to use E04 solely to access the Mill. The crossing point at E04 is unavailable and appears to have been unavailable for many years, the provision of an alternative route would therefore address the lack of connectivity to the public rights of way network north of the railway.
- 5.3.32 That connectivity will be provided via the footway alongside Elizabeth Way and Parndon Mill Lane. Although there is no footway along Parndon Mill Lane, the ATC data suggests that vehicles travel along it at speeds considerably below the posted speed limit; that was certainly the impression I gained from my site visits. The proposed alternative can therefore be considered relatively safe for pedestrians to use.
- 5.3.33 The proposal would require some reprofiling of the ground to provide a suitable gradient for the alternative path. This may require the installation of ramped steps to provide suitable access. Although the provision of steps of any kind may adversely impact upon some users, there is currently no means of access along FP EX/185/73; a means of linking FP EX/185/73 with the remaining network may therefore be considered suitable.

- 5.3.34 As with other diversionary routes, Network Rail will be responsible for the maintenance of the new path for 12 months with responsibility transferring to the highway authority thereafter; the additional burden placed on the highway authority has been accommodated within the side agreement.
- 5.3.35 No DIA was carried out in relation to E04 as the crossing has been unavailable for many years. I concur with Network Rail that the proposed diversion has the potential to increase connectivity and accessibility to the network; the impact of the increase in journey distance is unlikely to be felt disproportionately as everyone would be affected in the same manner regardless of any protected characteristics.
- 5.3.36 I consider that the Secretary of State can be satisfied that that people with protected characteristics would not be disproportionately affected (over and above the effects likely to be experienced by the rest of the population) as a result of the proposed diversion. The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Conclusions**

- 5.3.37 Having regard to the above and to all other matters raised in relation to E04, I conclude that the Secretary of State should include E04 within the order as the proposed alternative provides those who would wish to use the crossing with a suitable and convenient alternative route.



## 5.4 **E05 Fullers End**

### **Description of the Crossing**

- 5.4.1 The crossing is located on the southern outskirts of Elsenham and crosses the Liverpool Street to Ely railway line. The crossing is located between Robin Hood Road to the north of the railway and Tye Green Road to the south. On the north side of the railway FP EX/13/29 runs from the crossing in a south westerly direction through agricultural fields.
- 5.4.2 The crossing has tarmacked surface approaches on both sides and is provided with a level crossing deck and is accessible to people with limited mobility, with enough room between bollards to accommodate most wheelchairs and mobility scooters. The crossing has wicket gates and MSLs and an audible warning system that warns when it is not safe to cross the railway. The crossing also benefits from street lighting.
- 5.4.3 There are residential properties to the north and east of the crossing along Robin Hood Road and some scattered development to the south on Tye Green Road. The site of the former Elsenham Sawmill is currently being redeveloped for residential occupation. The crossing provides access between residential areas and properties north and south of the level crossing and between the public rights of way to the west and east of the level crossing.
- 5.4.4 E05 is an active level crossing with MSL and an audible warning of the approach of trains. The railway has two tracks and carries passengers and freight at a line speed of up to 70mph. E05 has an ALCRM score of C6. No recent incidents or user errors at this crossing have been recorded in the last 5 years. The July 2016 census recorded a total of 401 pedestrians and 51 cyclists using the crossing over a 9-day period with two users pushing prams or pushchairs. Sixty people (including 7 cyclists) used the crossing on the busiest day of the survey.

### **Description of the proposal**

- 5.4.5 It is proposed to close E05 to all users, with the extinguishment of the existing public footpath rights and to provide a new footpath utilising an existing underpass. Users of FP EX/13/29 heading towards E05 from the east will be diverted south on a new 2m wide unsurfaced field edge path approximately 20m in length to connect to a new 2m wide surfaced field edge path approximately 110m in length between an existing underpass and the level crossing. Lighting is to be provided along the surfaced footpath and within the underpass.
- 5.4.6 The proposed footpaths to the north of the railway would converge on an existing underpass. It is proposed that the underpass will be surfaced and lit. On the south side of the railway a new 2m wide surfaced footpath through the former Elsenham Sawmill site would provide access to Tye Green Road and onward routes. The total additional length of the diversion route is approximately 220m.

5.4.7 The current proposal for the new footpath to the south of the railway is shown in Replacement Sheet 11 of the deposited plans. Negotiations between Network Rail and the developer of the former Elsenham Sawmill site have resulted in an amendment to the proposal as originally submitted and would result in the new footpath running adjacent to the railway boundary fence. The original proposal would have resulted in the new footpath running between the buildings then in existence; the redevelopment of the site means that the alignment of the original proposal would be obstructed by new houses.

### **The Case for Network Rail**

5.4.8 The Uttlesford Local Plan contains a number of allocations for large amounts of housing in Elsenham – some of which has the potential to increase risk at this level crossing. E05 is, therefore, an example of a location where closure via diversion would allow NR to pro-actively manage risk at the crossing, and to manage it at a time when an appropriate solution remains available. Contrary to the submission made by the Ramblers, increased risk resulting from increased usage is a cause for concern – not a reason to keep the crossing open.

5.4.9 Removal of this crossing, despite the fact it is protected by MSLs and not merely reliant on users to 'stop look and listen' – is therefore entirely consistent with the strategic objectives which underpin this Order. NR seeks to extinguish the public footpath rights over E05 and divert users to an existing underpass located just to the west of the crossing via two new footpaths: one to the south, one to the north. The new footpath to the south passes through a former industrial estate, which is currently being developed. Following discussions with the affected landowner and the removal of existing buildings on site, Network Rail has been able to amend its proposal, so that the footpath will be located adjacent to the railway boundary and will be graded down to the underpass.

5.4.10 Suitable footpaths with a surface of reclaimed road planings at a suitable gradient can be provided in this location. The gradient on the north side of the railway will be less steep than the desirable maximum – 1 in 12 – and overall, when looking at the distance between the level crossing and the underpass and difference in levels this would equate to around 1 in 20, although it would be steeper in some parts. The current climb up to Robin Hood Road from the level crossing is about 1 in 16. The proposed paths would have to be provided to the reasonable satisfaction of the highway authority.

5.4.11 The DIA undertaken concluded that due to the availability of the alternative route in the local area to cross the railway, diversion along the proposed route was considered an appropriate solution. The DIA raised a number of points for consideration – the provision of handrails in the underpass; the provision of lighting over the whole route and the provision of CCTV in the underpass and that the new route should have an even surface.

5.4.12 It is considered that given the level of usage of the existing crossing and the location of facilities in this area, the additional time that would be added

to journeys would not be such as to prevent people from walking if they are currently choosing to do so. Network Rail believes that the proposed alternative provides a suitable and convenient replacement for existing users of the crossing.

- 5.4.13 Ms Holmes, a landowner affected by the proposed new PROW to the north of the railway, has also objected to the proposals. An alternative route to the north of the railway had been considered but discounted as it would have added approximately 550m in journey distance. As regards the concerns expressed about security of Ms Holmes' property, Network Rail would continue discussions as to appropriate mitigation that could be provided, if the Order is confirmed.
- 5.4.14 The alternatives suggested by objectors – (i) installation of locking gates/provision of a refuge area, (ii) a bridge over the level crossing, and (iii) creation of a new underpass under the level crossing – are not feasible solutions in this location. The only locations where locking gates are installed are at manned crossings – E05 is not such a crossing. The construction of an underpass would require significant land take whereas a fully accessible bridge would have an adverse impact upon the landscape at this location. Such solutions also did not fall into the scope of phases 1 and 2 of the Strategy.

### **The Cases for the Objectors**

#### **Sasha Holmes (on behalf of the Holmes family) (OBJ 115)**

- 5.4.15 The family strongly oppose the proposed diversion which would see the alternative path run over their land on the west of the railway. The family has concerns regarding vandalism and access to their property which may arise as a result of the proposed diversion. Negotiations between the family and NR regarding the diversion had not been successful.
- 5.4.16 If the crossing is proven to be unsafe then the installation of an underpass would be the most appropriate course of action. The topography of the land lends itself perfectly to an underpass and would provide the quickest and most efficient route to and from the village for all users.
- 5.4.17 It is acknowledged that the cost of an underpass would be significant but the housing developments in Elsenham in the vicinity of the railway could provide contributions towards those costs if the potential increase in use is considered to significantly increase risk at the crossing. Although approaches had been made to developers and the planning authority, there has been no positive outcome due to the piecemeal approach taken to housing development.
- 5.4.18 The diversion of 250m involving long inclines would not be convenient for users with mobility issues and the convenience element of the diversion is heavily weighted towards the railway operator. The proposal would result in users having a lengthy route to or from the village which takes them through a remote underpass where undesirables may loiter.

### **Elsenham Parish Council (OBJ 147)**

5.4.19 The Parish Council has always been supportive of the plan to close E05 subject to a suitable alternative, safe and accessible route being put in place. However, there is uncertainty regarding access, lighting and on-going maintenance. The Parish Council needs to be confident that there will be lighting along the whole of the new path including the underpass and the sawmill site. The existing access to FP EX/13/29 is via a stile which should be replaced to ensure that the new path is accessible to wheelchairs, pushchairs and mobility scooters. The Parish Council also requires assurances that maintenance of the new footpath would not fall upon the Parish Council.

### **The Ramblers (OBJ 148)<sup>81</sup>**

5.4.20 Fullers End is a road crossing and hence its approaches are tarmacked and useable in all weathers. The crossing is level and only 10m across. The crossing is illuminated by a streetlamp and the proximity of houses makes it safe and secure to use at night and during winter months. This crossing is not one of those crossings in the middle of a field, used only by the occasional ramble. It is continually used by residents on an everyday basis. It allows Fullers End to function as a real community.

5.4.21 The consultation undertaken by Network Rail took no account of any request to maintain and upgrade the existing crossing function. Network Rail has stated that the installation of locking gates, in addition to flashing lights, would not be possible because there would be no space for a safe run-off area should a person be on the crossing when the gates were locked. This cannot be justified. There is space each side of the gates to create such an area, and with the short distance between the gates, time to reach this would be minimal. This or similar upgrading arrangements could be done to maintain this well-used local amenity and would be worth the investment.

5.4.22 E05 is in the rapidly growing settlement of Elsenham and must be considered in this context. The crossing already experiences very high levels of usage (with around 400 recorded users over the 9-day census period). With further development in the area projected in the future, usage of this crossing can only be expected to increase.

5.4.23 Seen in its local context, the proposed diversion is too long and dog-legged to be convenient. Mr Goffee's evidence was that the claimed additional distance of 250m, for the proposed route, would take a considerably longer time to walk compared with the existing route. With the proposed surface of reclaimed road planings, that would be longer still in wet weather. That extra distance and time must be considered in the context of the use of this path – namely within a community to access local amenities. This is a crossing where an added 5 minutes to a journey (especially a "there and back" journey) really can make all the difference.

---

<sup>81</sup>OBJ 148 W -005 Mr Goffee's evidence

- 5.4.24 Were this diversion to be implemented, there is a real risk that users will choose to get in the car instead. Clearly, this goes completely against the Government's aim to encourage walking and cycling for shorter journeys. What is more, there remain too many uncertainties as to what this diversion will actually look like on the ground. Firstly, in order to be suitable, the diversion would need to be accessible, but there are clear gradients to overcome in the approaches to the underpass. Accessibility constraints are therefore an important consideration. Whilst NR's witnesses reiterated that they "believed" that a gradient less steep than 1 in 20 could be achieved, no site survey had yet been done, and reliance was placed on LiDAR<sup>82</sup> data. Secondly, there was no guarantee in the Order that lighting in the underpass would be delivered, nor that a compacted surface would be provided.
- 5.4.25 The Ramblers contend that it is impossible to properly assess whether this diversion will be suitable without further details and assurances on these matters.

#### **Jim Collins (OBJ 170)**

- 5.4.26 The proposed alternative is unsafe because it is remote, and users cannot be seen from adjacent properties. People in general will not use the new route and would drive to access local amenities.
- 5.4.27 The current crossing is used approximately 75 times per day; no accidents have occurred here in the last 20 years. Those developments in the area for which permission has been granted can be regarded as "sustainable" as there is a traffic free means of reaching local amenities via Fullers End crossing. Uttlesford District Council could have sought planning gain contributions from developers to whom permissions have been granted which could have funded the provision of an underpass.

#### **Inspector's Conclusions**

##### **SOM4(a) The likely impacts on landowners, 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.**

- 5.4.28 Mr Collins has an interest in land to the south of the railway, whereas land to the north is owned by the Holmes family. The proposed diversion would result in the line of FP EX/13/29 running marginally closer to Mill House and concerns are expressed about reduced security and greater intrusion arising as a result of the diversion. In addition to the possibility of there being some element of overlooking of the property, there would be an increase in the extent of public rights of way over the Holmes' land of approximately 25m. Network Rail will continue to discuss mitigation with regard to the safety concern the landowner has.

---

<sup>82</sup> Light Detection and Ranging

5.4.29 The maximum usage per day recorded by the 9-day survey was 67 people; I consider it unlikely that this level of use would lead to a level of intrusion which could not be mitigated by Network Rail or by the compensation provisions of s28 of the Highways Act 1980.

5.4.30 With regard to the land to the south of the railway, modifications to the proposed route through the Elsenham sawmill site have addressed the site-specific concerns raised by Mr Collins. Although the modified proposal no longer has any direct impact upon the housing development progressing on the site, any adverse impacts which remain can be addressed by means of s28 compensation.

#### **SOM4(b) Impacts on other users**

5.4.31 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.4.32 No evidence was presented to suggest that the proposal would be prone to flooding or would have any adverse impact upon flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.4.33 E05 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

5.4.34 The proposal would result in the realignment of part of FP EX/13/29 as a field edge as opposed to a cross-field path. Whilst the land would remain burdened by a PROW, there may be some benefit for agriculture in the loss of a cross-field path. The proposed alternative route would introduce urban elements into the landscape in the form of lighting columns and a tarmac path surface; whilst the proposed route is on the southern fringe of the built-up area of Elsenham, the introduction of such elements into a pasture field will inflict harm upon the landscape.

#### **SOM4(g) Other environmental impacts including noise and health**

5.4.35 No matters were raised regarding this issue.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.4.36 From the location of the crossing and the extent and type of users demonstrated by the 9-day survey and the other evidence of use, it is likely that the crossing is used on a regular basis by people for recreational

purposes to access the local footpath network and by Elsenham residents or utilitarian purposes to access local facilities.

- 5.4.37 The main issues arising from the proposal related to the suitability of the proposed alternative and whether it was possible to provide a route which was fully accessible to those who currently used the crossing. Road planings were not considered to be a suitable material for the construction of such a route.
- 5.4.38 Reliance was placed upon LiDAR data to demonstrate that a suitable gradient could be produced, although no on-site survey had been conducted to demonstrate that a suitable gradient was achievable. Whilst it may be possible to engineer a solution, the feasibility of that solution would not be revealed until the detailed design stage. The DIA raised a number of matters which NR say are addressed in the proposal; matters such as lighting and handrails will be considered at the detailed design stage.
- 5.4.39 The proposed route would introduce a pronounced dogleg into any journey undertaken from the north or south which included E05. Users approaching the crossing from the west on FP EX/13/29 wishing to travel north along Robin Hood Road would only face a marginal increase in journey times and distances. All other users, particularly those wishing to travel between Tye Green Road and Robin Hood Road for access to and from properties or village services would face an additional 250m with corresponding increases in journey times.
- 5.4.40 Whilst those undertaking a recreational walk involving FP EX/13/13 or FP EX/13/17 are unlikely to be troubled by an additional 250m, for those using the crossing for utilitarian purposes, the proposed alternative is likely to present a significant inconvenience in comparison with the existing crossing and may discourage such users.
- 5.4.41 The Equality and Diversity Overview report<sup>83</sup> noted that the use of the underpass and the increased gradient of the proposed alternative route had the potential to restrict accessibility to some groups and may be challenging to older people, wheelchair users or parent with pushchairs. As a result, it was suggested that a full DIA was carried out. The DIA recommended the provision of lighting over the whole route, CCTV and handrails in the underpass and the provision of an even surface for the new footpath.
- 5.4.42 It is Network Rail's proposal to surface the alternative route on the north side of the railway with compacted road planings. Concerns were raised about the suitability of such material for a surface to be used by those with mobility impairments. Whilst it is true that such material can be compacted it is unlikely that the final surface would be sufficiently uniform and smooth to act as a replacement for the surface present at the crossing; particularly for those using pushchairs, wheelchairs or mobility scooters.

---

<sup>83</sup> NR 121

5.4.43 Taking all these matters into account, the Secretary of State should be aware that there will be issues with access on the alternative route. The gradient of the proposed footpath and the surface being provided is likely to limit use by some of the existing users of the crossing and would disproportionately impact upon those with mobility impairments who would not be troubled by the wicket gates at the current railway boundary. Including the crossing in the Order would fail to advance equality of opportunity or foster good relations between those who share a relevant protected characteristic and those who do not share it. I consider that there is a likelihood that the PSED would not be met which adds weight to my recommendation not to include E05 within the Order.

### **Conclusions**

5.4.44 Having regard to the above and to all other matters raised in relation to E05 and taking into account the existing technological measures installed at E05 to mitigate the risk currently present at the crossing, I consider that there are issues with the suitability and convenience of the proposed alternative for existing users of E05. The proposed surface material may adversely impact upon those with protected characteristics and the circuitous alternative route is likely to inconvenience utilitarian users of the crossing. In addition, the proposed lighting and nature of the path surface would further urbanise the landscape.

5.4.45 I conclude that the Secretary of State should not include E05 within the order as the proposed alternative does not provide existing users of the crossing with a suitable and convenient alternative route.



## 5.5 **E06 Elsenham Emergency Hut**

### **Description of the crossing**

- 5.5.1 Footpath EX/25/32 crosses the Liverpool Street to Ely railway line just to the north of Elsenham. The footpath commences on Old Mead Road and runs in a generally westerly direction between hedges and fences to the railway. The path crosses the railway and then continues westerly to its junction with FP EX/51/14; this path then continues in a generally south-westerly direction to connect with Bedwell Road at a point just east of the overbridge carrying the M11.
- 5.5.2 To the west of the railway the path runs over arable farmland which extends northwards in the area between the M11 and the railway line. There are a number of residential properties along Old Mead Road with some houses on a new development between the railway and Old Mead Road immediately to the south of FP EX/25/32. The main area of housing is to the south of the crossing beyond Elsenham Station.
- 5.5.3 Elsenham Emergency Hut crossing has been closed to the public since 2013 under a TTRO. The ALCRM score for this crossing is currently M13, however when the crossing was open to the public its ALCRM score was C10. E06 is a 'passive' crossing, requiring users to 'stop, look and listen' for approaching trains. There is insufficient sighting on the up-line side of the crossing which is not mitigated by the whistle boards present on the line due to the proximity of Elsenham Station which is served by stopping and non-stopping trains. The line is dual track with trains operating in both directions at a maximum line speed of 70mph.

### **Description of the proposal**

- 5.5.4 It is proposed to close E06 to all users and extinguish the existing PROW over it. In its place, it is proposed to create a new footpath between the railway and the M11, linking FP EX/25/32 with FP EX/51/24 to provide an off-road walking route between Elsenham and Henham. Users will reach FP EX/51/14 from E06 via a diversion heading south along Old Mead Road to cross the railway at the existing manned level crossing or stepped footbridge at Elsenham Station.
- 5.5.5 Users would then continue west along the footways on New Road and Bedwell Road to reach FP EX/51/14. Users would continue northeast towards the level crossing along FP EX/51/14 and FP EX/25/32, leading them to a new 2m wide and approximately 1,400m in length unsurfaced footpath in field margin on the west side of the railway outside of Network Rail land. This would head north between the railway and the M11 to connect to existing FP EX/51/24.
- 5.5.6 The initial proposal included provision for the diversion of FP EX/13/22 and part of FP EX/13/15 to a new route around an existing warehouse facility to reduce the amount of roadside walking. This proposal was subsequently

modified<sup>84</sup> and the proposal is to now create a section of footway on the eastern side of Old Mead Road from the southern end of FP EX/13/22 running in a south-easterly direction towards Elsenham railway station.

- 5.5.7 Footpath EX/25/7, which crossed the railway at Edges level crossing until it was closed in 2014 and is now a cul-de-sac on either side of the railway, would be extinguished (approximately 550m in length).

### **The Case for Network Rail**

- 5.5.8 E06 is one of a series of whistle board protected level crossings between Bishop's Stortford and Audley End that are a limiting factor on speed along this stretch of line; the diversion of these crossings is sought to address the constraints upon line speeds.
- 5.5.9 The accessibility of this site is very limited as the extremely narrow and uneven alleyway through which the crossing is reached from Old Mead Road would exclude those with limited mobility, who use a wheelchair, or are travelling with a child in a pushchair. As the crossing is subject to a TTRO, no user census data was collected, but consultation feedback suggests that if the crossing were open it would be used for recreation purposes.
- 5.5.10 Prior to the TTRO, members of the public would have been able to use the crossing to access the PROW network to the east of the railway from the PROW network to the west, either by turning south along Old Mead Road until they reached existing FP EX/13/22 to continue further east, or north along Old Mead Road to connect into footpaths further north.
- 5.5.11 Network Rail proposes diversionary routes to facilitate both those onward eastward and northwards journeys utilising a new north-south footpath and Bedwell Road, New Road and the crossing facility at Elsenham Station.
- 5.5.12 It is recognised that E06 provides an east-west link today, whereas the new PROW runs north-south. The provision of a new north-south link provides some mitigation for loss of the direct east-west link; provides people with a choice as to where they can go; and mitigates against disruption to the PROW network which could potentially be caused by the closure of E06.
- 5.5.13 It is notable in this regard that both the landowner objectors affected by the proposed new path saw the opportunities that closure of E06 provided. Their view was that in addition to closing E06 Network Rail should extinguish the remaining 'culs de sac' of PROW between Elsenham Station and Ugley Lane level crossing to the north. Whilst the new PROW could, understandably, be viewed by the landowners as an enhancement, its provision was a consequence of seeking to maintain east-west fluidity between the wider network which Network Rail seeks to maintain through its Order proposals.

---

<sup>84</sup> NR 157

- 5.5.14 An outstanding concern remains, from Fairfield Elsenham Ltd (OBJ 130) about the proposed temporary use of plots 15 and 16A. It is considered that access to plots 16A and 15 will be required for approximately 2 months to facilitate the works on plot 17A<sup>85</sup>. Those parcels had been chosen due to their proximity to the works which needed to be undertaken (both under the original scheme, and the amended proposals). Network Rail maintains that there is no cause for concern that the temporary use of those plots should adversely affect Fairfield Elsenham's ability to develop their land, if planning permission is granted for the same.
- 5.5.15 In correspondence with the objector, Network Rail has suggested that liaison continues between the parties regarding projected timescales as they become clearer for their respective proposals.
- 5.5.16 Network Rail maintains, therefore, that the Order may properly be confirmed with the proposed modification.

### **The Cases for the Objectors**

#### **Cy Fogel on behalf of You're Furnished Ltd (OBJ 102)**

- 5.5.17 The route of the proposed diversion of FP EX/13/22 and FP EX/13/15 would bisect his land. If the footpath was diverted to his land boundary it would not interfere with any future plans for extending his warehouse.
- 5.5.18 The Secretary of State should note that although Mr Fogel was consulted with regard to the proposal to modify the Order to not involve the diversion of FPs EX/13/15 and EX/13/22 over his land, he did not formally withdraw his objection. However, as the proposal<sup>86</sup> now does not involve Mr Fogel's property, the grounds of his objection have effectively been addressed.

#### **David Lock Associates on behalf of Fairfield (Elsenham) Limited (OBJ 130)**

- 5.5.19 Fairfield (Elsenham) Limited has long term interests in plots 16A and 15<sup>87</sup> which is proposed to be used on a temporary basis. An outline planning application has been made for the development of up to 350 homes on client's land; the land at issue forms part of that development and would provide open space and a cycleway / footpath to link the development with Elsenham Station.
- 5.5.20 Clarification is sought of the timeframe for the projected temporary use of plots 16A and 15. Notwithstanding this, the objection is maintained with regard to injurious affection and diminution of value in relation to plots 16A and 15 arising from NR's proposals; the proposals could prejudice the timely delivery of the proposed open space and cycleway / footway link should the development proposals be approved.

---

<sup>85</sup> NR 189 – tab 130 letter dated 25 January 2019

<sup>86</sup> NR 157 – Replacement sheet 12

<sup>87</sup> NR 157 – Replacement Sheet 12

**Strutt and Parker on behalf of James Raey (OBJ 146) and Francis Braeckman (OBJ 123)**

- 5.5.21 The new route proposed over client's land is an unnecessary addition of approximately 1.5Km of PROW when there are sufficient alternatives within the rights of way network. The proposal does not provide a link to the network on the east of the railway: it provides an entirely new route. The proposed route between footpaths has never existed and never been shown to be required. The Order is part of a level crossing closure scheme, not a footpath enhancement scheme.
- 5.5.22 The general direction of rights of way in the area is west to east; the addition of a north-south route is considered unnecessary as Edges crossing was closed a number of years ago. The cul-de-sac footpaths created by the stopping up of E06 and Edges crossing should be extinguished between Bedwell Road and Ugley Lane.
- 5.5.23 The proposed footpath will provide little amenity value due to the proximity of the M11 and will encourage trespass on the railway.

**Elsenham Parish Council (OBJ 147)**

- 5.5.24 The proposed closure of FP EX/13/22 and the diversion of FP EX/25/15 is unnecessary and is wholly unrelated to the closure of the footpath over E06. There are concerns regarding air quality of a footpath routed adjacent to the M11; if the proposed north-south path were routed adjacent to the railway there would be no need to extinguish part of FPs EX/25/7 and EX/51/24.

**Inspector's Conclusions**

**SOM 4(a) The likely impacts on landowners, 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.**

- 5.5.25 The proposal seeks authority for the temporary use of land (plots 16A and 15) in which OBJ 130 has an interest. These parcels form part of a prospective development for which outline planning consent has been sought and would form part of a public open space and footway / cycleway between the development and Elsenham Station which would contribute to the sustainability of the development. Neither Network Rail nor the objector has been able to provide timescales for the implementation of their respective projects as consents and approvals from third parties are required in either case.
- 5.5.26 Network Rail has suggested continued liaison between the parties to avoid conflict between the two proposals. Network Rail propose to use plots 16A and 15 for a period of approximately 2 months. It would not appear that the temporary use of the land for the period envisaged would have any significant adverse effect upon the objector's development proposals which could not be mitigated by s28 compensation, given that the land, if

developed in accordance with the outline plans would form part of the open space of the development.

- 5.5.27 As regards the landholding of OBJ 146, the creation of the new north – south footpath would impose a burden upon the land which does not currently exist; this new path would be field-edge. There would be some balancing of the burden on the objector’s land as the east-west cross-field FPs EX/51/24 and EX/25/7 would be removed from the land.
- 5.5.28 The proposed path would provide a north-south link in the network to prevent the fragmentation of that network if the proposal put forward on behalf of the objectors were to be implemented. The proposal would have an adverse impact upon the objector’s landholding, but not of such magnitude that could not be mitigated through s28 compensation.
- 5.5.29 No evidence has been produced to show that the proposals would have any adverse effect upon local businesses, utility companies or other statutory undertakers.

#### **SOM4(b) Impacts on other users**

- 5.5.30 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail’s level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.5.31 No evidence was presented to suggest that the proposal would be prone to flooding or would have any adverse impact upon flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.5.32 E06 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.5.33 The proposal would result in the creation of a new footpath on a north-south alignment adjacent to the M11 and the extinguishment of a section of cross-field path. Whilst the land would remain burdened by a PROW, there may be some benefit for agriculture in the loss of a cross-field path. The creation of the proposed footpath is unlikely to have any adverse impact upon the landscape.

#### **SOM4(g) Other environmental impacts including noise and health**

- 5.5.34 Objector 147 raised concerns about air quality in the vicinity of the M11. It is to be noted that any users making their way along FP EX/51/13 to the west of the M11 or FPs EX/25/37 and EX/25/24 to the east, will have similar exposure to the air in the vicinity of the M11 in using those paths. No

empirical evidence was provided to demonstrate that users of the proposed footpath would be at greater risk from poor quality air when using the proposed path than they already experience in this area.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.5.35 No user survey data was collected at this crossing as it is temporarily closed under a TTRO. NR consider that the crossing is most likely to have been used in the past for recreational as opposed to utilitarian purposes. I have no evidence before me to dispute that suggestion.
- 5.5.36 No evidence was submitted to suggest that the proposed footpath would be unsuitable for use by those who used E06 crossing prior to its temporary closure or that the proposed alternative would inconvenience users or prospective users in any way. Users travelling from the north along FP EX/51/24 cannot currently cross the railway following the closure of Edges crossing.
- 5.5.37 Although the closure of E06 would remove the opportunity for those travelling from the south along FPs EX/51/14 and EX/25/32 to cross the railway, the proposed footpath would provide a north-south link which would facilitate access to the rights of way network on the east of the railway, albeit via Elsenham Station. The proposed route would therefore maintain the connectivity provided by E06 and improve connectivity to the network to the north of the former Edges crossing.
- 5.5.38 The proposed new path would be an unsurfaced field edge path crossing similar terrain and at a similar gradient to the existing footpath. A new section of footway to link between the western end of FP EX/13/22 and Elsenham Station is to be provided which will remove the need for users to walk in the road as they currently do. I consider that the proposed alternative would provide a safe means of crossing the railway.
- 5.5.39 I do not consider that those engaged in a recreational walk in the area would be unduly inconvenienced by the increase in journey time and distance which would arise from the closure of E06.
- 5.5.40 The Equality and Diversity Overview rating for this crossing was green and no DIA was carried out following that appraisal. Although the proposal would increase journey time and distances, the proposal provides for the re-establishment of a connection between those parts of the rights of way network severed by the closure of Edges crossing. There should be no disproportionality introduced by the proposed diversion.

**Conclusions**

- 5.5.41 Having regard to the above and to all other matters raised in relation to E06, I conclude that the Secretary of State should include E06 within the Order as the proposed alternative route described in the filled up Order dated 13 February 2019 and shown on Replacement Sheets 12, 13 and 14

would provide existing users of the crossing with a suitable and convenient alternative route.

## 5.6 **E07 Ugley Lane**

### **Description of the crossing**

- 5.6.1 E07 is a private accommodation crossing of the Liverpool Street to Ely railway line and provides a means of access between two access tracks which connect to North Hall Road to the east and west of the railway. An electricity substation is located immediately north of the crossing to the north-east of the railway; the gated private access track from North Hall Road on the east side of the railway provides access to this sub-station.
- 5.6.2 The crossing was created at the time of the construction of the railway to provide a means of access between lands in single ownership which had been severed by the railway.
- 5.6.3 Users of E07 are provided with a telephone link to the signal box to obtain warning of the approach of trains. There are no visual or audible warning systems present at the crossing; if users do not use the telephone then they are required to stop, look and listen for the approach of trains.
- 5.6.4 The railway comprises two lines of rails at this location with a maximum line speed of 70mph. A 9-day user survey undertaken in July 2016 did not record any use of the crossing. The signaller's occurrence book showed relatively little usage recorded over a ten-year period; the crossing effectively being mostly unused.

### **Description of the proposal**

- 5.6.5 It is proposed to extinguish all private rights in existence over the crossing. No alternative route is being created as Network Rail consider that a convenient alternative means of crossing the railway is provided for by the public carriageway of North Hall Road and the 'toot-toot' underbridge. The northern approach to the level crossing from North Hall Road will be retained as this provides access to the electricity sub-station for the railway's overhead traction supply.
- 5.6.6 In addition to removal of the level crossing infrastructure (gates on the south side), the physical works at the crossing will be limited to the erection of additional fencing, required to secure the railway at the (current) level crossing point.

### **The Case for Network Rail**

- 5.6.7 There is no further need for agricultural or accommodation access over this crossing as ownership of the land either side of the crossing is now fragmented; there is no longer a need to pass and re-pass over the crossing. Landowners either side of the railway will be able to access their land from North Hall Road.



## **Objections**

- 5.6.8 There were no objections or representations submitted in relation to the proposal to close E07.

## **Inspector's Conclusions**

### **SOM4(a) The likely impacts on landowners, 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**

- 5.6.9 The ownership of lands on the north-east of the railway is different from that on the south-west of the railway. Consequently, there is no requirement for accommodation access at this crossing. No landowner will therefore be disadvantaged by the extinguishment of private rights or the physical obstruction to access. There will be no adverse impact upon local businesses, utility providers or statutory undertakers, nor upon the public, there being no PROW over E07.

### **SOM4(b) Impacts on other users**

- 5.6.10 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

### **SOM4(c) Impact on flood risk**

- 5.6.11 The closure of E07 will not have any adverse impact upon flood risk in the area.

### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.6.12 E07 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.6.13 The only works arising from this proposal would be to secure the access to the railway from the south-western approach; consequently, the proposal will not lead to any adverse impact upon the landscape.

### **SOM4(g) Other environmental impacts including noise and health**

- 5.6.14 No matters were raised regarding this issue.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.6.15 The alternative means of crossing the railway already subsists as it is the publicly maintainable carriageway known as North Hall Road. The road passing under the railway bridge has a double bend and road users are advised to proceed with caution. The proposed alternative route is in use and provides a suitable and convenient alternative route for existing users to access their property.

**Conclusions**

- 5.6.16 Having regard to the above and to all other matters raised in relation to E07, I conclude that the Secretary of State should include E07 within the order as the proposed alternative provides those who would wish to use the crossing with a suitable and convenient alternative route.

## 5.7 **E08 Henham**

### **Description of the crossing**

- 5.7.1 Footpath EX/55/26 crosses the Liverpool Street to Ely railway line to the north of the hamlet of Ugley. The village of Quendon lies to the west, Widdington to the east whilst Newport is to the north. E08 Henham is currently a footpath level crossing and the public rights of way leading up to it on either side provide a broadly east west link. The surrounding area is predominantly rural with a small number of residential properties along North Hall Road.
- 5.7.2 On the western side of the railway the approach is from BR EX/51/21 that passes under the M11 via an underbridge using a farm access track. This track has a loose aggregate surface. The bridleway leads to North Hall Road and does not directly link to FP EX/55/26. Users connect to FP EX/55/26 by walking along the carriageway of North Hall Road as there is no footway. Footpath EX/55/26 leaves North Hall Road via a set of steps up through a hedge and into a private yard. The footpath passes across the yard (made up of a loose aggregate surface) and along the side of a shed (on an unsurfaced dirt path) before using a small concrete footbridge to cross over the stream (River Cam).
- 5.7.3 Once across the bridge steps up the railway embankment provided access to the level crossing. Once over the railway, a further flight of steps leads down the railway embankment and FP EX/55/26 then continues as an unsurfaced field edge path adjacent to an arable field in an easterly direction to its junction with BRs EX/55/30 and EX/55/142 near to Jock Wood Cottage.
- 5.7.4 E08 Henham is a 'passive' crossing, requiring users to 'stop, look and listen' for approaching trains and has an ALCRM score of C6. There is insufficient sighting on the 'down' side of the crossing looking 'up', and this is mitigated by whistle boards. The line is dual track with trains operating in both directions at a maximum line speed of 70 mph. A 9-day user census carried out in July 2016<sup>88</sup> showed a total of 4 persons as having used the crossing during that period.

### **Description of the proposal**

- 5.7.5 It is proposed to close E08 to all users and extinguish the public rights of way from the point where the proposed diversion heads south on the eastern side of the railway to the point where FP EX/55/26 meets North Hall Road on the western side of the railway. It is proposed to create a new footpath on the eastern side of the railway to utilise an existing underbridge to the south of the crossing and to provide a new off-road footpath on the western side of the railway to connect with BR EX/51/21.

---

<sup>88</sup> NR25 3267-LON-E08. Mr Fisk referred to a survey carried out in March 2016 which showed 3 people using the crossing in a nine-day period (NR31/1 page 35)

- 5.7.6 Initially the proposal was for the new footpath on the west of the railway to be created as a field edge path adjacent to North Hall Road. Following representations made by affected landowners, the route of the proposed path on the west of the railway would still be field edge, but adjacent to the M11 embankment connecting to BR EX/51/21 near to the motorway underpass<sup>89</sup>.
- 5.7.7 On the eastern side of the railway, the location of the proposed footpath has been amended to clarify that it will run on the eastern side of the belt of screening trees to avoid the need for any of the trees to be felled to accommodate the new footpath<sup>90</sup>.
- 5.7.8 The proposal would require users travelling east on BR EX/51/21 to turn south having emerged from the M11 underpass onto a new footpath heading south and then east to North Hall Road. Users would then head east, crossing over North Hall Road onto an unnamed road passing under the railway, and then turn north onto a new footpath to connect with FP EX/55/26, where users can continue on their way as if they had not been diverted.
- 5.7.9 Footpath EX/55/26 west of the level crossing will be extinguished and the existing footbridge on this footpath will be removed. The infrastructure of the crossing will be removed, and the railway boundary fence secured. The new footpath on the west side of the railway will require a timber footbridge (less than 4m long)<sup>91</sup> to cross a highway ditch where the proposed footpath would connect to North Hall Road.

### **The Case for Network Rail**

- 5.7.10 E08 is one of a series of whistle board protected level crossings between Bishop's Stortford and Audley End that are a limiting factor on speed along this stretch of line; the diversion of these crossings is sought to address the constraints on line speeds.
- 5.7.11 The accessibility of this crossing is limited by the use of stiles, steps and narrow pathways, which reduces the ability of those with limited mobility or wheelchair users to access the crossing. The grass approaches to the crossing may also worsen the accessibility of the site for those with limited mobility. Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.7.12 A route using that part of North Hall Road between the eastern end of BR EX/51/21 and the underbridge was suggested by the landowner on the west side of the railway as an alternative to the footpath being placed on the eastern side of his field<sup>92</sup>. This suggestion had been considered by Network

---

<sup>89</sup> NR 105 and Order plan replacement sheet 16

<sup>90</sup> NR 105 and Order plan replacement sheet 16

<sup>91</sup> Schedule 1 to the Order: Work No.3

<sup>92</sup> NR32/2 page 421

Rail but discounted due to concerns about road safety. Automated Traffic Count data was collected on North Hall Road which showed that the 85<sup>th</sup> percentile speed of the 1,150 vehicles using the road was 48mph in a 60mph zone<sup>93</sup>; there were no verges along North Hall Road onto which pedestrians could step if needed when vehicles were passing.

- 5.7.13 It was recognised that since the M11 had been constructed and BR EX/51/21 diverted, users had to walk along North Hall Road to access FP EX/55/26. Given the speed of vehicles passing along North Hall Road, the proposed field edge route would provide greater amenity value to the user.
- 5.7.14 The diversion route includes a short section of road walking to pass beneath the railway and cross North Hall Road. This proposal was subject to a Stage 1 RSA<sup>94</sup> carried out in line with HD19/15. No issues were identified following the Audit. The total length of the diversion route is approximately 435m, however, the origin and destination points will affect the overall diversion length for many users.
- 5.7.15 Given the location of the crossing point, the feedback from public consultation and census data it is considered that the crossing is used infrequently by a small number of people to access the wider footpath network.
- 5.7.16 E08 lies within the east-west public rights of way network that connects Little Henham and Widdington in the east to Quendon Rickling in the west. Using the level crossing it is possible to undertake a recreational walk of over 7.5km. The new diversion route to the south of the railway maintains links between the public rights of way on both sides of the railway. The proposed route is longer than the existing, however, as it provides leisure walking the increase in distance and journey time is considered acceptable.
- 5.7.17 It is to be noted that the proposals for E08 have been amended to accommodate concerns expressed by the affected landowners. No further objections were received following consultation on those revised proposals.

### **The Cases for the Objectors**

#### **David Hedges (OBJ 138)**

- 5.7.18 No objection is made to the closure of crossing E08; it is and always has been a danger to those who use it. However, the proposal to route the footpath on the boundary of his field adjacent to North Hall Road is objected to. Since the M11 was built in 1975 and BR EX/51/21 rerouted, walkers have used North Hall Road to link to FP EX/55/26. The section of North Hall Road between the underpass and the bridleway is straighter than the section currently used which would make walking along the road safer. The field crossed by the proposed footpath is used for grazing livestock and for

---

<sup>93</sup> NR32/2 tab 1 page 3

<sup>94</sup> NR16 Report Number 354763/RPT219 Revision A December 2015 page 3; report Number 367516/RPT021 November 2016 page 5

lambling in springtime; there is currently no public access and the livestock are safe.

- 5.7.19 The road frontage to the field should not be lost due to a footpath being present; agricultural machinery and gates will block the proposed path and will present a danger to users and to the land manager. Mr Hedges does not want the financial liability that this footpath would entail; responsibility for the upkeep of the footpath should fall to Network Rail.
- 5.7.20 The revised proposal for the footpath to run along the field boundary with the M11 is a better solution of the two proposals that Network Rail have made; however, Mr Hedges would prefer not to have a footpath on his grazing land and the responsibility and liability which comes with it.

### **Charles Martineau (OBJ 83)**

- 5.7.21 No objection is made to the routing of the new footpath across the land, but objection is made to the projected route along the present boundary fence. From the present crossing south there is a thick wood with low branches for around 100 meters beside the boundary fence through which it is not possible to walk. The footpath should be moved from the field boundary to the east of the wood, some 10 meters from the present boundary fence.
- 5.7.22 Network Rail plan to build a 2m fence beside the footpath along the boundary for security. Where the footpath has been moved away from the boundary with a thick wood in between, there should be no need for such a fence. To build a 2m high fence between the wood and the rail embankment can only be done by hand as there is no room for any machinery. A strong objection would be made to any trees being felled or even branches removed.
- 5.7.23 The revised proposal shown on replacement sheet 16 addresses Mr Martineau's concerns regarding the position of the footpath. The routing of the footpath on the eastern side of the belt of trees removes his objection to the proposal. The proposed fence on the boundary of the railway should be erected from Network Rail land to prevent any damage to the trees.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.7.24 The revised proposal has addressed the objection made by Mr Martineau as there would be no adverse impact upon the belt of trees which screen his property from the M11. Although the proposed footpath would run over his land, there is no evidence before me that there would be any adverse impact upon Mr Martineau's land which could not be compensated under section 28 of the 1980 Act.

5.7.25 The revised proposal has been designed following further consultation with affected landowners. The routing of the footpath alongside the M11 as opposed to alongside North Hall Road is the preferred option of Mr Hedges although he would prefer not to have a footpath in his grazing field. As part of the proposal, Network Rail have agreed to additional fencing and gates as part of the diversion to mitigate the impact upon Mr Hedge's landholding. Although the proposed footpath would run over his land, there is no evidence before me that there would be any adverse impact upon Mr Hedges' land which could not be compensated under s28 of the 1980 Act.

5.7.26 No evidence was presented to suggest that the proposal would have an adverse impact upon local businesses, utility providers or statutory undertakers.

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

5.7.27 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.7.28 No evidence was presented to suggest that the proposal would be prone to flooding or would have any adverse impact upon flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.7.29 E08 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

5.7.30 On the western side of the railway it is proposed to install a new 2m fence along the boundary of the railway. Whilst this will have a minor impact upon the landscape, it will be effectively screened by the trees on Mr Martineau's land which provide screening of the M11.

5.7.31 Fencing and suitable gates will be erected alongside the footpath on Mr Hedges' land to separate the path from his grazing land and to mitigate the adverse impact upon his agricultural operations. The proposed works, including the construction of a new footbridge are unlikely to have any significant adverse impact upon the landscape.

#### **SOM4(g) Other environmental impacts including noise and health**

5.7.32 No matters were raised regarding this issue.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.7.33 The proposed alternative route would run over relatively even ground and would not require users to ascend or descend steps; the proposed route would therefore be more accessible to all users than the current crossing point.
- 5.7.34 The proposed alternative would require users to walk an additional 435m in order to continue a journey between FP EX/55/26 and BR EX/51/21. The increased length of the route may be an issue for some users, however the evidence regarding current use suggests that E08 is used as part of a recreational walk between local settlements and the additional distance is unlikely to pose an inconvenience to such users.
- 5.7.35 The proposed route requires the user to walk along the minor road from the underbridge and to cross North Hall Road. At North Hall Road there are good sightlines in both directions so users will be able to judge when it is safe to cross the road. Crossing the road at this point is likely to pose a lesser safety risk to users than they would face if they had to walk along North Hall Road where there are no verges to step into. I consider that the proposed alternative would provide a safe, suitable and convenient means of crossing the railway.
- 5.7.36 No evidence was submitted to suggest that the proposed footpath would be unsuitable for use by those who currently use E08. I do not consider that those engaged in a recreational walk in the area would be unduly inconvenienced by the increase in journey time and distance which would arise from the closure of E08.
- 5.7.37 The Equality and Diversity Overview rating for this crossing was green and no DIA was carried out following that appraisal. Taking account of the route as a whole, there should be no disproportionality introduced by the proposed changes and the inclusion of this crossing in the Order would not appear to lead to a likelihood of the PSED not being met.

### **Conclusions**

- 5.7.38 Having regard to the above and to all other matters raised in relation to E08, I conclude that the Secretary of State should include E08 within the Order as the route described in the filled up Order dated 13 February 2019 and shown on Replacement Sheet 16 would provide existing users of the crossing with a suitable and convenient alternative route.



## 5.8 **E09 Elephant**

### **Description of the Crossing**

- 5.8.1 Footpath EX/41/14 crosses the Liverpool Street to Ely railway line in the village of Newport. E09 provides a footpath crossing of the railway line and provides a link between the built-up part of the village and the open countryside to the east of the railway.
- 5.8.2 Footpath EX/41/14 commences on High Street, Newport and runs in a generally easterly direction between properties which front the High Street and crosses the River Cam by means of a footbridge. The path then runs through a small orchard to the railway. On the east side of the railway the footpath continues in a north-easterly direction over agricultural land to its junction with FP EX/41/23.
- 5.8.3 E09 has been closed to the public since 2015 under a TTRO. The ALCRM score for this crossing is currently M13, however when the crossing was open to the public its ALCRM score was C6. E09 is a 'passive' crossing, requiring users to 'stop, look and listen' for approaching trains. There is insufficient sighting in all directions at this crossing. The whistle boards present along the line do not provide sufficient mitigation due to the proximity of Newport station; a 'near miss' incident in summer 2015 resulted in the imposition of a TTRO. The line is dual track with trains operating in both directions at a maximum line speed of 70 mph.

### **Description of the proposal**

- 5.8.4 It is proposed to close E09 to all users and extinguish the existing PROW over it. The proposed diversion would involve that part of FP EX/41/14 to the west of the railway being extinguished in its entirety and a length of approximately 50m of the footpath east of the railway also being extinguished.
- 5.8.5 From High Street, users would be diverted south along the existing footway to Debden Road. Users would then use the existing carriageway along Debden Road up to the railway bridge. Traffic signals are proposed on the approach to and the departure from the bridge as well as at the station access road which runs parallel to and east of the railway. This would regulate the single flow of traffic over the bridge. A proposed 1m wide raised footway would be created over the bridge to segregate pedestrians from vehicular traffic.
- 5.8.6 Path users would then travel along Debden Road to connect with a new footpath east of the railway. The new footpath would run in a northerly direction in field margins for a length of approximately 180m and connect to the residual part of FP EX/41/14 approximately 50m east of the level crossing. This new footpath will be 2m wide and unsurfaced. The diversion route will add an additional 880m to the route.

## **The Case for Network Rail**

- 5.8.7 E09 is one of a series of whistle board protected level crossings between Bishop's Stortford and Audley End that are a limiting factor on speed along this stretch of line; the diversion of these crossings is sought to address the constraint upon line speeds.
- 5.8.8 There is insufficient sighting of approaching trains, and due to the proximity of Newport station, the whistle boards do not provide the user with sufficient warning time. The installation of technology at this crossing would be a complicated undertaking requiring MSLs to be integrated with the signalling system due to the proximity of Newport station which is served by stopping and non-stopping trains. The only locations where locking gates are installed are at manned crossings – E09 is not such a crossing.
- 5.8.9 As part of the scheme it is proposed to signalise the railway bridge and station access road. This would regulate the single flow of traffic over the bridge and create space for the new footway. As a means of introducing enhanced pedestrian facilities across the bridge, consideration was given to a more formal priority system with traffic in one direction given priority over the other direction. The proximity of the access road to the railway station, coupled with the poor visibility across the bridge makes this difficult.
- 5.8.10 Therefore, the proposed traffic signal control at the Debden Road Bridge will provide stop lines and signal equipment on all three entries, these being Debden Road eastbound, Debden Road westbound and the access road from the railway station. The traffic lights will be in operation at all times rather than being dependent on a pedestrian calling the lights. New signal heads will be positioned close to the Fire Station access to the west of the bridge; adjacent to The Chestnuts, and just east of the station access road on the east side of the bridge. A 1m wide footway would be created over the bridge and along Debden Road to segregate traffic<sup>95</sup>.
- 5.8.11 The proposed route includes a section of road walking on Debden Road in Newport. This proposal was subject to a Stage 1 RSA carried out in line with HD19/15. The RSA identified that the carriageway width over the railway bridge narrows to single carriageway with no footway or verge meaning pedestrians would have to share the carriageway with vehicles. Forward visibility of pedestrians could be restricted (particularly eastbound) and although vehicles are travelling slowly over the bridge, this could result in conflict between pedestrians and vehicles.
- 5.8.12 The RSA recommended that remedial measures be implemented over the bridge to provide a safer environment for pedestrians, but that if this was not possible then to consider an alternative route. The introduction of traffic signals and the provision of a footway will resolve the issue of safety for pedestrians over Debden Road bridge.

---

<sup>95</sup> NR12 page 38 and 39

- 5.8.13 ATC data was collected on Debden road west of the bridge, that showed an average 2-way daily traffic flow of 1,764 vehicles and 85<sup>th</sup> percentile speed of vehicles of 27.7mph where the posted is 30mph<sup>96</sup>. The proposals were considered acceptable when traffic levels were considered on this section of the route.
- 5.8.14 The proposed details for the traffic signals over Debden Road bridge were submitted to and reviewed by ECC's highways officers, who considered that the solution would be acceptable to them.
- 5.8.15 Alternative proposals put forward by affected landowners had been considered. With regard to the proposed alternative route west of the railway, the proposal to locate the footpath on the eastern boundary of Mr Bunten's field and not on the western boundary of the Fisk Estate field was considered to be less disruptive to agricultural activity and had a lower potential for interaction between the public and farm vehicles as the path would be located away from working arable land. In addition, FP EX/41/14 currently runs through the small field at issue and to place the footpath in the adjacent field would require removal of some of the field boundary and would unnecessarily affect vegetation close to Debden Water SSSI.
- 5.8.16 The proposed footpath to the east of the railway as it leaves Debden Road has been located at the western side of the Ms Newell's land to minimise impact on use of the site and possible future development of the land.
- 5.8.17 Previous user census data had recorded 6 pedestrians per day using E09 when it had been open, however it was not possible to collect further census data as the crossing was temporarily closed at the time of the surveys in 2016. Consultation feedback suggested that the crossing had been used for leisure and recreational access to the local footpath network east of the level crossing.
- 5.8.18 Newport Parish Council indicated that it would strongly object to the proposal for traffic lights at Debden Road bridge, which they considered would make it "considerably more dangerous" than what is there at the moment. Network Rail does not consider this to be the case for the reasons set out. ECC, as Highway Authority did not raise any objections to the proposed route, subject to the introduction of suitable mitigation measures at the bridge.
- 5.8.19 Network Rail maintains, therefore, that the Order may properly be confirmed without modification.

### **Representations in support**

#### **Ryan Gunn (SUPP 001)**

- 5.8.20 The crossing is considered to be dangerous particularly if used by children or young adults. The noise generated by train whistles at this crossing is

---

<sup>96</sup> NR32/2 Tab 1 page 45

invasive; the use of train horns appears to have become more aggressive and continues past 23:00 hours. The crossing is only a short distance from the Debden Road bridge or Newport Station which has a pedestrian footbridge; the removal of the crossing and the use of train whistles associated with it will be a positive outcome for the residents of Newport.

### **The Cases of the Objectors**

#### **Newport Parish Council (OBJ 144)**

- 5.8.21 Elephant crossing has been used by a considerable number of residents and visitors as it is a very popular and attractive walk from the centre of the village. The Parish Council suggests that automatic gates with lights should be installed with a designated refuge area. Debden Road bridge is humpbacked and single lane only; the bridge is narrow and there is insufficient room for a footway between the bridge parapets. Pedestrian controlled traffic lights on the bridge would increase risk to users and increase delay times for road users.
- 5.8.22 Appearing at the inquiry on behalf of the Parish Council, Mr Ayles said that the Parish Council had been unaware of the proposal to install traffic lights that were not pedestrian controlled to regularise the single lane flow of traffic over the bridge, or of the proposal to create a footway on the bridge and along the north side of Debden Lane, or of the agreement reached with ECC regarding funding. The Parish Council had not measured the width of the bridge with regard to whether it was feasible to install a footway.

#### **Objectors who did not appear at the inquiry**

##### **Robert Bartlett OBE (OBJ 014)**

- 5.8.23 The two rounds of public consultation demonstrated that the majority of respondents did not agree with the proposed closure of the crossing. Most respondents thought the suggested alternatives were neither safe nor convenient and that they exposed users to greater risks than is presently the case when using the crossing.
- 5.8.24 The proposals will permanently alter the footpath network for users and will include undesirable additional road walking along roads that make no provision for the separation of pedestrians from vehicles. The use of Debden Road bridge is not a safe option; it is too narrow and is used by HGVs which are too large to fit under the railway bridge in Newport. If pedestrians are required to cross the bridge when traffic is flowing, they will be exposed to a greater hazard than they experience crossing the railway.
- 5.8.25 If the closure of Elephant crossing was removed from this order and included in a later phase of Network Rail's project, then the requirements of both NR and users could be accommodated by new infrastructure.

### **Christian Bunten (OBJ 113)**

- 5.8.26 The most logical and least disruptive route for the proposed alternative to take would be to continue along the western field edge of the field owned by the Fisk Estate. Disruption would be limited to land in one ownership rather than two. The impact upon his small field would be more acute than on the enormous field owned by the Fisk Estate. There is an existing footpath on the northern edge of the Fisk Estate field and re-routing the path through this field would allow a direct link from Debden Road to the footpath to be created.

### **Neil Hargreaves (OBJ 180)**

- 5.8.27 The proposed alternative route is dangerous as it involves a road with no footway and a narrow bridge. Pedestrians will be required to cross and re-cross the road. An automatic locking gate is provided at Elsenham and warning lights are provided elsewhere. Technological solutions would address the noise caused by train whistles.

### **Margaret Newell (OBJ 181)**

- 5.8.28 The line of the alternative route should be shared with The Chestnuts. Her parcel of land has permission to convert an existing farm building into a house, so it is not just a field.

### **Inspector's Conclusions**

#### **SOM 4(a) The likely impacts on landowners, 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**

- 5.8.29 The principal dispute between Network Rail and those landowners affected by the proposal centres on the position of the proposed footpath. Mr Bunten suggests that as the proposed route enters land owned by the Fisk Estate and would run as a field edge path on the south side of the field, it should continue as a field edge path alongside the western boundary and not cross onto his land.
- 5.8.30 The Fisk Estate field was at the time of my site visits actively managed for an arable crop whereas Mr Bunten's land had the appearance of an unmanaged meadow with a belt of trees and scrub on its eastern edge. Network Rail contend that the proposed route would interfere less with current agricultural activity and would avoid potential conflicts between pedestrians and agricultural vehicles undertaking operations in an arable field. Having had the opportunity to view the site for myself, I concur with this assessment.
- 5.8.31 The current line of FP EX/41/14 runs over Mr Bunten's land and the proposed path would connect to the residual part of the path unaffected by the proposal. To create a footpath on the eastern field margin is likely to require some vegetation clearance along the line of the proposed footpath;

this should have no appreciable impact upon Debden Water SSSI, the southern boundary of which is approximately 100m to the north of the proposed junction.

5.8.32 There is likely to be some adverse impact upon Mr Bunten's land as a result of this proposal but one which could be mitigated by the compensation provisions under s28 of the 1980 Act.

5.8.33 The proposed route would leave Debden Road utilising an existing field access which provides vehicular access to Ms Newell's property. The building on the site which was in the process of conversion to a dwelling is at the eastern end of the site, whereas the footpath would run on the western boundary approximately 75m from the building. Although Ms Newell suggests that the proposed footpath should be shared with The Chestnuts, the proposed path has been located to cause the least disturbance to her property and the least impact upon the redevelopment of the land.

5.8.34 Although the proposal may have an adverse impact upon Ms Newell's property, I do not consider that these are matters which could not be compensated for under s28 of the 1980 Act.

5.8.35 No evidence was presented to suggest that the proposal would have an adverse impact upon local businesses, utility providers or statutory undertakers.

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

5.8.36 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.8.37 No evidence was presented to suggest that the proposal would be prone to flooding or would have any adverse impact upon flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.8.38 The southern boundary of Debden Water SSSI lies approximately 100m to the north of the current line of FP EX/41/14. Although some vegetation clearance would be required along the line of the proposed footpath, this should not impact upon the SSSI or the reasons for its designation.

#### **SOM4(f) Impacts upon the landscape, agricultural land and forestry**

5.8.39 No submissions were made which suggested the proposal would have any adverse impact upon the landscape. Although new fencing will be installed along both the eastern and western sides of the railway in the vicinity of E09 if the proposal is approved, this would be a renewal of the existing

boundary fence and will be required to prevent future trespass upon the railway. There will be some vegetation clearance required along the proposed footpath although this should not impact upon the landscape. The proposed footpath has been located to minimise any adverse impact upon agricultural activity.

#### **SOM4(g) Other environmental impacts including noise and health**

- 5.8.40 The supporter complains of the noise impact of train horns being sounded outside the NTQP. If E09 were closed there would be no requirement for trains to sound their horns on the approach to the crossing. Some residents may regard this as a beneficial impact of the proposal.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.8.41 There is no recent census of use data available for E09 as it has been temporarily closed on safety grounds since 2015. Network Rail's historical data of 6 users per day and the Parish Council's assertion that the crossing formed part of a popular and attractive walk suggests that it is likely that the crossing has been used on an irregular basis by members of the public for recreational purposes and to access the PROW network to the east of the railway.
- 5.8.42 The dispute between the Parish Council and Network Rail with regard to the proposal centred on the suitability of the proposed route along Debden Road. The Parish Council's objection was based upon the initial proposal made for the provision of pedestrian controlled traffic lights on the overbridge and without any separate provision of a footway on the northern side of Debden Road and on the bridge. The current proposal as set out in NR26 and NR12 appear to address those concerns.
- 5.8.43 Without the provision of a footway along Debden Road the proposal would require pedestrians to walk in the road and cross the overbridge amongst vehicular traffic. Whilst a promoted route known as the Saffron Trail currently utilises the overbridge and anyone following that route would take appropriate action to cross the bridge safely, the closure of the crossing would require those pedestrians to also cross the railway at the overbridge. The provision of a new footway on the north side of Debden Road would facilitate the safe passage of all pedestrians over the bridge whether those users were those who wished to use E09 or those who were following the Saffron Way.
- 5.8.44 The provision of phased three-way traffic lights would also formalise the single lane usage of vehicular traffic at the overbridge. The bridge is of insufficient width for two-way traffic over it, although there is sufficient width for the provision of a raised, kerbed footway and single file traffic.
- 5.8.45 The provision of a raised footway will enable pedestrians to cross the overbridge irrespective of the direction of the flow of traffic. The provision of

a new footway on the north side of Debden Road will enable pedestrians to walk safely between the new footpath and the centre of the village.

- 5.8.46 The proposed works along Debden Road and at the overbridge will improve the safety of those who currently cross the overbridge and will ensure the safety of those who may have wished to use E09 to cross the railway.
- 5.8.47 The proposed alternative would increase journey times and distances and would result in a slightly more circuitous route for users wishing to access the footpath network to the east of the railway. The proposal would maintain a link to the residual part of FP EX/41/14; given that E09 does not provide any direct link to any footpath other than FP EX/41/23 and the likely use of the current path for recreational purposes, the additional length and time does not appear to be unsuitable or inconvenient to those who would wish to use E09.
- 5.8.48 The proposed route would follow field margins over land of a similar type and gradient as the existing route of FP EX/41/14. There are a number of field boundaries which would be required to be crossed facilitated by the least restrictive infrastructure; the proposed route is likely to be of greater accessibility to users than the current crossing as stiles are unlikely to be required on the proposed route.
- 5.8.49 The Equality and Diversity Overview rating for this crossing was green and no DIA was carried out following that appraisal. The increased length of the route may be an issue for some users, however the evidence regarding current use suggests that E09 is used as part of a recreational walk and the additional distance is unlikely to pose an inconvenience to such users. Taking account of the route as a whole, there should be no disproportionality introduced by the proposed changes and the inclusion of this crossing in the Order would not appear to lead to the PSED not being met.

### **Conclusions**

- 5.8.50 Having regard to the above and to all other matters raised in relation to E09, I conclude that the Secretary of State should include E09 within the order as the proposed alternative provides those who would wish to use the current crossing with a suitable and convenient alternative route.



## 5.9 **E10 Dixies**

### **Description of the Crossing**

- 5.9.1 Footpath EX/41/7 commences on the west side of B1383 Cambridge Road and runs in a generally westerly direction crossing FP EX/41/4 to its junction with BOAT EX/41/2. Both FP EX/41/4 and BOAT EX/41/2 run in a generally north-south direction with FP EX/41/7 providing an east-west link to this part of the network from the eastern side of the railway.
- 5.9.2 E10 is approached from the Cambridge Road over a grass and earth path between two residential properties. On the western side of the railway FP EX/41/7 runs over an unsurfaced grass path within the grounds of the Joyce Frankland Academy. The railway is slightly elevated compared with the surrounding land and E10 is approached by means of slight inclines. On the eastern side of the railway E10 was accessed by a gap in the boundary fence whereas on the western side of the railway a two-step stile was present in the boundary fence. The crossing was provided with decking boards between the rails to provide a uniform surface over the rails.
- 5.9.3 A 9-day user census undertaken in July 2017 recorded a total of 34 pedestrians using the crossing during that period with the busiest day recording 9 users<sup>97</sup>. E10 has been closed under a TTRO since September 2017 and currently has an ALCRM score of M13.
- 5.9.4 When the crossing was open the ALCRM score had been C6. Although the 9-day census undertaken in July 2017 had not identified any vulnerable users at the crossing, Network Rail had received reports of children playing on the crossing and the LCM had observed groups of children near, but not on the crossing. In the light of these reports, the assessment of required sighting distances had been revised and included a 50% uplift for vulnerable users. Consequently, the protection given by the audible warning system and the whistle boards did not provide sufficient mitigation at the crossing in any direction. The line is dual track with trains operating in both directions at a maximum line speed of 70mph.

### **Description of the proposal**

- 5.9.5 It is proposed to extinguish FP EX/41/7 from Cambridge Road to where it meets FP EX/41/44 to the west of the railway. It is not proposed to create any new sections of PROW as Network Rail considers that the existing highway and PROW network provides a suitable and convenient alternative.
- 5.9.6 Walkers travelling from Cambridge Road who would have used the level crossing to access the PROW network to the west of the railway, would instead utilise the footways alongside Cambridge Road down to Gaces Acre, either using Cambridge Road (which becomes Belmont Hill after the junction with Bury Water Lane) for the full distance, or instead use Bridge End and Water Lane, which are quieter roads of comparable length. From Gaces

---

<sup>97</sup> NR25 3267-LON-E10 page 6

Acre, users would head north onto FP EX/41/22, west on the footway of Bury Water Lane, crossing Bury Water Lane to continue north on FP EX/41/4, through the grounds of the Joyce Frankland Academy. The total length of the alternative route would be 1,150m.

### **The Case for Network Rail**

- 5.9.7 There are a number of allocations within the Uttlesford District Local Plan to develop land in this area<sup>98</sup> for housing and the potential increased usage – with consequent increase in risk – resulting from such development, supports Network Rail’s approach of seeking to manage that risk through closure of the crossing if possible, rather than being a justification for keeping the crossing open as suggested by the Ramblers.
- 5.9.8 In terms of assessing the proposed diversion routes the focus of Network Rail has to be on the existing users of the path – not people who might potentially occupy a potential development at some point in the future. It was not Network Rail’s responsibility to provide links for communities that were being developed or expanded on one side of an existing railway, where that expansion post-dated the railway itself. Uttlesford District Council had not expressed any concerns about the proposed closure during consultations on the proposal.
- 5.9.9 The proposed route links into the existing network of public rights of way, which converge within Newport to the south of the crossing, and to existing highway footways to the south and east of the crossing on Bury Water Lane and Cambridge Road from where residential properties and services within Newport can be accessed. The footpath to the west of the crossing links to the wider public rights of way network including the Saffron Trail and Harcamlow Trail.
- 5.9.10 The proposed route provides access for pedestrians wishing to travel east to west between the northern part of Newport village and the footpath network to the west of the railway as does the original route. The total length of the diversion route is approximately 1,150m and will be longer than the existing for some users depending on their origin and destination points and involve some walking on footways adjacent to the highway, however, as the current route can only be accessed from Cambridge Road to the east and provides leisure walking it is considered acceptable.
- 5.9.11 An alternative option was considered where users would be diverted to the south making use of the existing footways on the B1383 Cambridge Road and Bury Water Lane. This option was discounted in favour of the proposed solution as it was acknowledged that while this option provided a more direct route, there may be potential issues with pedestrians on a narrow stretch of highway on Bury Water Lane without footways.
- 5.9.12 An RSA was performed for E10 Dixies level crossing proposal. The RSA did not identify any road safety related issues associated with the scheme. ATC

---

<sup>98</sup> NR30/2 tab 6

data was collected on Water Lane east of B1383, that showed an average 2-way daily traffic flow of 75 vehicles and 85<sup>th</sup> percentile speed of vehicles of 16.1mph where the posted is 30mph<sup>99</sup>. The proposals were considered acceptable when traffic levels were considered on this section of the route.

- 5.9.13 ATC data was also collected on Bury Water Lane (opposite Joyce Frankland Academy) west of B1383 Cambridge Road, that showed an average 2-way daily traffic flow of 1,341 vehicles and 85<sup>th</sup> percentile speed of vehicles of 30.3mph where the posted is 20mph<sup>100</sup>.
- 5.9.14 The Ramblers' main objections to the proposals appeared to be three-fold: (i) the length of the proposed diversion; (ii) the risk that users would not follow the proposed diversion via FP EX/41/22 but would instead take a 'short cut' via Bury Water Lane; and (iii) crossing facilities on Bury Water Lane. An additional concern appeared to be that there was some risk to the staff and pupils of the Joyce Frankland Academy from a potential increase in use of FP EX/41/4 which might arise as a result of the proposal.
- 5.9.15 As regards the length of the proposed diversion, the maximum additional length of the diversion route would be around 1,150m – approx. 14 mins additional walking time - and that the origin point of the journey would affect how much of the diversion an individual had to undertake.
- 5.9.16 Whilst the level crossing provided an east-west connection to Cambridge Road, there was little in terms of onward access to the wider PROW to the east of Cambridge Road. Cambridge Road leads to the centre of the village which is to the south of Bury Water Lane. Given the location, and purpose, served by the crossing, the additional distances are considered acceptable.
- 5.9.17 It is considered unlikely that walkers would choose to use Bury Water Lane as opposed to the proposed diversionary route, regardless of whether they were travelling from the east or the west of the railway. Users accessing E10 from Cambridge Road were likely to be local residents, who would therefore be familiar with the issues with that section of Bury Water Lane. In terms of people travelling from the PROW network to the west it was considered unlikely that people would choose to walk down Bury Water Lane, noting that mapping and/or signage would indicate the other routes, specifically, FP EX/41/22 just to the south west of where path users would emerge from FP EX/41/4.
- 5.9.18 Provision of a dedicated crossing point was neither necessary nor appropriate. A zebra crossing already existed between the two school sites which Network Rail did not wish to adjust to avoid impacting upon the school. It would not be appropriate to install a second crossing point so close to the existing one. There would also be potential consequences for traffic on Bury Water Lane if a pedestrian island were to be installed.

---

<sup>99</sup> NR32/2 tab 1 page 48

<sup>100</sup> NR32/2 tab 1 page 51

- 5.9.19 The low volume of traffic numbers and low speeds identified in the ATC data collected on Bury Water Lane did not support the need for a further road crossing point at this location. Use of the eastern end of Bury Water Lane had been discounted as part of the alternative route although it was in use by schoolchildren and others.
- 5.9.20 As regards concerns raised in relation to the safety of staff and pupils of the school, both FPs EX/41/7 and EX/41/4 currently run through the school grounds. The school was consulted on the proposal and had raised no concerns.
- 5.9.21 The existing highway and PROW network provide a suitable and convenient alternative for existing users of E10. The Secretary of State is invited to confirm the Order without modification.

### **In support**

#### **Mrs Phyllis Radford (SUPP 04)**

- 5.9.22 Mrs Radford knows of six people who have had near misses when crossing at Dixies. The crossing is mainly used by people walking their dogs which are given some protection by the chain link fence erected by the railway. The trains on the railway travel up to 70mph and the curve in the lines limits the view of oncoming trains meaning that trains arrive at the crossing quicker than the time it takes to cross the line. New housing developments in the area may see an increase in the use of the crossing by children.

### **The case for the Objector who appeared at the inquiry**

#### **The Ramblers (OBJ 148)<sup>101</sup>**

- 5.9.23 The proposal for E10 is simply an extinguishment of the ROW that traverses it. The entirety of the "diversion" is on existing highway, all of which is available for use today. Network Rail's census demonstrated that over 30 people used the crossing over the 9-day period. Each one of these users are choosing to use the crossing, instead of the "alternative route" - they must be deriving an added convenience from doing so. All such convenience will be lost if this proposal were to be implemented.
- 5.9.24 The local community of Newport would lose one of the few east-west connection points across the railway during a period of both current and planned growth in the area; the local plan extracts provided by Network Rail are evidence of this current and planned growth.
- 5.9.25 Concerns over the need to retain this pedestrian access point, within this context of growth, were clearly voiced by local people during consultation<sup>102</sup>. Applying Network Rail's strategic case to E10, Network Rail is seeking to justify the loss of this pedestrian access point simply on the

---

<sup>101</sup> OBJ 148 W-004 Mr Goffee; OBJ 148 W-019 Mr Russell

<sup>102</sup> NR05 pp124-125

basis of the generic issues associated with level crossings across its entire network. No crossing-specific justification (in terms of safety risks, maintenance costs or impacts on operational efficiency) are being put forward. This cannot justify the permanent extinguishment of this ROW.

- 5.9.26 In any event, the "alternative route" is not acceptable. It is too long and, due to how it would be used in practice, it is too unsafe. Mr Goffee's evidence was that a user would take half an hour to complete the "diversion" one-way (meaning 1 hour for a "there and back" walk), including the time needed to cross the roads. This is far too long to be a "convenient" replacement for users. Notably, Network Rail's own DIA for E10 indicates that the additional length is not convenient and recommends the consideration of alternative solutions at the level crossing<sup>103</sup>.
- 5.9.27 Partly due to the considerable length of this diversion it is submitted it is likely that users will short-cut the suggested route by using Bury Water Lane although Network Rail accepted that it would not be appropriate to recommend Bury Water Lane as part of an alternative route. At the eastern entrance to this road, the embankments on either side are high, making it difficult for users to take evasive action to avoid oncoming traffic. The Inspector cannot be satisfied, from the information before him, that users will not use this common-sense short-cut, especially users who are unfamiliar with the area. The constraints on the eastern entrance are not easily appreciated for users approaching from the west. As a result, the proposal is not safe.
- 5.9.28 Furthermore, Mr Russell provided persuasive evidence as to why a crossing point is needed on Bury Water Lane<sup>104</sup>. It would assist pedestrians in safely crossing the road, but it would also help to slow motorists as it would likely require build out on the side (either on one side or both sides) and may involve one-way working. No such crossing facilities are proposed by Network Rail.
- 5.9.29 E10 serves as a valued connection in the ROW network and was described as an "extremely well used link". Network Rail have not justified the need to extinguish this link and the suggested alternative is too long and unsafe to be fit for use.

### **The Cases of the Objectors who did not appear at the inquiry**

#### **Robert Bartlett OBE (OBJ 014)**

- 5.9.30 The two rounds of public consultation demonstrated that the majority of respondents did not agree with the proposed closure of the crossing. Most respondents thought the suggested alternatives were neither safe nor convenient and that they exposed users to greater risks than is presently the case when using the crossing.

---

<sup>103</sup> NR 120 – DIA E10 Dixies p17

<sup>104</sup> OBJ 148 W-019 p11

- 5.9.31 The proposals will permanently alter the footpath network for users and will include undesirable additional road walking along roads that make no provision for the separation of pedestrians from vehicles. The suggested alternative avoids Bury Water Lane, but it is inconceivable that this road will not be used by pedestrians as it is the shortest access to the area users have been diverted from. The proposal for E10 is simply to extinguish a PROW. It would be difficult to provide a grade separated crossing at the present location, but one could be provided further north.

**Newport Parish Council (OBJ 144)**

- 5.9.32 Significant residential development in the area to the north and east of Bury Water Lane will lead to the crossing providing a major link to the village for residents living in that area. Automatic gates with MSLs should be installed at the crossing with a designated refuge area for pedestrians.

**Saffron Walden and District Footpaths Association (OBJ 159)**

- 5.9.33 Dixies is a crucial link for walkers going east/west and is likely to become very useful for village residents. The alternative proposed is so lengthy and impractical it would not be used by ramblers or the public. They would seek the shortest route using a narrow road without a footway which is heavily used by school buses and parents collecting pupils from school. Residential development in the area requires a new crossing; a bridge could be built 300m to the north where there is space for a footbridge.

**Richard Monk (OBJ 169)**

- 5.9.34 Dixies crossing is used as part of a walk from to Whiteditch Lane and Wendens Ambo. The warnings at the track are adequate and great care is taken whilst crossing. To lose this crossing would mean a trek along the pavement beside a busy road. As the village expands, so the need for more crossings / better pedestrian access increases. New housing estates are being built each side of the track in the north of the village. Network Rail have a legal duty to manage crossings, not to close them. Closure of the footpaths is an easy option for Network Rail; they have everything to gain by the crossings being closed; villagers / pedestrians have a lot to lose. In recent months train horns have been sounded more frequently and for a longer duration at very unsociable times; between the hours of 06:00 and midnight. This is unacceptable behaviour considering the proximity of the track to houses, causing sleep deprivation and general discomfort.

**Neil Hargreaves (OBJ 180)**

- 5.9.35 Around 240 of the new houses will be in the catchment of the path leading to this crossing. The path takes you to the bus stop on the main road and the main village pub. It connects what is effectively a whole new village to the older part of the village and also makes a good circular route. The alternative is to walk along the road, part of which by the school is narrow with no footway and along the main road under the railway bridge, which is not exactly pleasurable, or cross the main road twice. The main road had 89,127 vehicles a week (Essex highways survey 2016) with the majority

breaking the speed limit. Although the crossing is currently lightly used no consideration has been given of the expansion of the village. Closure is not in the public interest because it creates a greater risk elsewhere and dissuades people from walking, the benefits of which far outweigh any risk on the railway and is a loss of amenity.

### **John Oswin Smith (OBJ 165)**

- 5.9.36 It is accepted that the crossing is dangerous; during the period 2007 – 2011 there were five near misses at the crossing. The diversionary route which is likely to be used from Cambridge Road to the entrance of the Joyce Frankland Academy is narrow (4.5m) and will see a considerable increase in the traffic using it as a result of the houses being built on Bury Water Lane and Whiteditch Lane and has no footpath. Given that the school will benefit from the closure of the footpath between the railway line and FP EX/41/4, consideration should be given to the school surrendering an equivalent strip of land adjacent to Bury Water Lane to provide a safe walking route.

### **Inspector's Conclusions**

#### **SOM 4(a) The likely impacts on landowners, 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**

- 5.9.37 No evidence was submitted to suggest that the proposal would have any adverse impact upon landowners, tenants, local businesses, utility providers or statutory undertakers. The proposal is likely to provide a positive benefit for the occupiers of residential properties located between Cambridge Road and the railway, as a PROW would no longer cross, or run adjacent to, their properties. The proposal would extinguish part of FP EX/41/7 which runs over playing fields of the Joyce Frankland Academy which is likely to be of positive benefit to the school.
- 5.9.38 Concerns were raised by Mr Russell on behalf of the Ramblers with regard to the safety of pupils of the Academy as a result of the proposed closure of E10. Whilst it is possible that FP EX/41/4 may see an increase in use due to those seeking to use E10 being diverted south through the school's grounds, it remains a fact that the grounds are already crossed by FP EX/41/4 and that no adverse comment about the proposal has been made by the school. I do not attach any weight to this argument.
- 5.9.39 It is evident that the population of Newport will increase in the coming years due to the projected developments in the vicinity of Bury Water Lane and Whiteditch Lane. It is common ground that the prospective expansion in the population of the village will see additional pressure on paths such as FP EX/41/7. Network Rail see this as also increasing the risk at a crossing which has insufficient sighting for vulnerable users and seek to address that potential increase in risk before the population of the village expands. Although some objectors appear to acknowledge that increased use may increase risk, the preferred solution for some would be for a pedestrian overbridge to be built at a point north of E10.

5.9.40 It is not known whether the construction of an overbridge would be feasible at E10 or at a point some distance to the north. However, the question to be answered at this stage is whether the proposal would provide a suitable and convenient alternative route for those currently using the crossing and not whether there was an alternative solution which should be pursued.

5.9.41 The principal matter of concern was the impact the closure of E10 would have on the public in terms of the additional length of the proposed alternative and the level of risk to those using the alternative in crossing Bury Water Lane or walking east along that road. These are matters for consideration under SOM4(h).

#### **SOM4(b) Impacts on other users**

5.9.42 Other users not included under the previous subheading would include those who use the rail network. The Ramblers submit that Network Rail have not provided any crossing specific evidence regarding the impact the closure of E10 would have upon the operational efficiency of the railway. However, the strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.9.43 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.9.44 E10 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.9.45 The proposal would have no impact upon agricultural land or forestry as FP EX/41/7 does not cross such land. Other than the removal of infrastructure at the crossing and the renewal of fencing at the railway boundary there will be no impact upon the landscape arising from the closure of E10.

#### **SOM4(g) Any other environmental impacts including noise and health**

5.9.46 One objector complains of the noise impact of train horns being sounded outside the NTQP. If E10 were closed there would be no requirement for trains to sound their horns on the approach to the crossing. Some residents may regard this as a beneficial impact of the proposal.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**



- 5.9.47 From the location of the crossing and the extent and type of users demonstrated by the 9-day survey and the other evidence of use, it is likely that the crossing is used on an irregular basis by people for recreational purposes to access the local footpath network to the west of the railway from Cambridge Road and to undertake circular walks in the local area.
- 5.9.48 The principle issues arising were the suitability and convenience of the proposed alternative in terms of length and safety in crossing and using Bury Water Lane. The proposed alternative to the use of FP EX/41/7 is wholly on existing highways and existing PROWs. No new PROWs would be created as a result of the closure of E10.
- 5.9.49 Anyone wishing to make their way from one end to the other of that part of FP EX/41/7 proposed for extinguishment would be required to undertake a journey of 1,150m. Network Rail estimate that such a journey would take 14 minutes, whereas the Ramblers estimate was 30 minutes. E10 provides an east-west link to the north of Newport but at Cambridge Road does not provide any onward connectivity to the PROW network in the area other than by following the footway north or south along Cambridge Road. The impact on any particular user would depend upon the origin of their journey and the intended destination.
- 5.9.50 Those users approaching Newport from the east along the existing PROW network and wishing to travel west are unlikely to be inconvenienced by the closure of E10 as the routes leading to Whiteditch Lane and Bury Water Lane provide connectivity to the footpaths west of the railway via the footways suggested as the alternative route. For those approaching from the east and wishing to travel north from the current junction of FPs EX/41/7 and EX/41/4, the proposed closure would result in an additional journey of around 300m; on a recreational walk, this would not present a significant inconvenience.
- 5.9.51 The closure of E10 would remove the possibility of undertaking a short circular walk in the immediate area utilising FPs EX/41/4 and EX/41/22. However, no evidence was submitted to show that the crossing was used in such a manner with all evidence demonstrating the use of E10 as part of longer walks within the area to places such as Wendens Ambo.
- 5.9.52 It is suggested that to reduce the distance required to be walked, users would not use FP EX/41/22 and Gaces Acre but would follow Bury Water Lane to its junction with Cambridge Road. This route has no footway beyond the school and the sunken nature of the road means there are no verges onto which pedestrians could step if faced with an oncoming vehicle. Bury Water Lane is also relatively narrow with limited space for vehicles to pass; the Ramblers consider the route unsafe.
- 5.9.53 Network Rail recognise the unsuitability of Bury Water Lane and have discounted it as an alternative. The characteristics of Bury Water Lane make it unsuitable as an alternative to the current route; however, the use of Bury Water Lane is not being proposed. FP EX/41/22 and the footways along Gace's Acre and Cambridge Road provide the user with a route which

is separated from vehicular traffic. In terms of risk to pedestrians, the proposed alternative is suitable for use.

- 5.9.54 Network Rail does not propose to provide a means of crossing Bury Water Lane between FPs EX/41/4 and EX/41/22 which the Ramblers contend is required. There are footways on either side of Bury Water Lane between the two footpaths and good sight lines in either direction along the road at the southern end of FP EX/41/4 and the northern end of FP EX/41/22. Pedestrians wishing to cross Bury Water Lane to the footway on the opposite side of the road would therefore be able to make an informed choice as to whether or not to cross the road, as current users of these footpaths already do. On balance, the proposed crossing point of Bury Water Lane appears to be suitable for the suggested use.
- 5.9.55 The Equality and Diversity Overview rating for E10 was red with a full DIA being undertaken. The Overview recognised that the proposed alternative route increased the distance walked by 1,150m which was likely to pose significant problems for people who struggle to walk long distances. In addition, part of FP EX/41/22 included gradients of over 5% which may be challenging for older people, wheelchair users or parents with pushchairs.
- 5.9.56 The issue of the length of the alternative was also recognised in the DIA as having the potential to impact disproportionately upon those with a protected characteristic namely, those with mobility impairments or children or older people who may experience difficulty in undertaking a longer journey. Closure of E10 would reduce the risk posed by the crossing to those with protected characteristics; however, the DIA recognises that potential impact the increase in journey distances may have and suggests that consideration be given to alternative solutions at the level crossing. There is no evidence that alternatives to the closure of the crossing (other than the proposed diversion) have been considered.
- 5.9.57 The evidence suggests that the proposal would restrict access for those with mobility impairments and other 'non-visible' characteristics such that including the crossing would fail to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and those who do not share it. Whilst there would be safety improvements for users in removing them from the crossing, those positive benefits are outweighed by the negative impacts which would arise from the proposed alternative.
- 5.9.58 The nature of the proposed alternative route is such that I consider that there is a likelihood that the PSED would not be met if E10 were to be included in the Order.

## **Conclusions**

- 5.9.59 Taking account of all of the above, I conclude that the Secretary of State should not include E10 within the order as the proposed route would not provide existing users of the crossing with a suitable and convenient alternative.

## 5.10 **E11 Windmills**

### **Description of the crossing**

- 5.10.1 Footpath EX/41/8 commences on B1383 London Road and runs in a generally westerly direction to cross the Liverpool Street to Ely railway south of the village of Wendens Ambo just south of Rookery Lane and Trees level crossing. Footpath EX/41/8 continues west from the railway to its junction with FP EX/41/4.
- 5.10.2 E11 is approached from London Road over a grass and earth path over agricultural fields. The footpath crosses the railway boundary by means of stiles in the boundary fences and infill boards between the rails. The surrounding area is predominantly agricultural and sparsely populated with few properties in the area. The River Cam is located approximately 300m to the east and the village of Audley End is approximately 400m to the north.
- 5.10.3 E11 is a passive level crossing where the user is instructed to stop, look and listen. The railway at this crossing comprises two lines of rails and carries passenger and freight with a line speed of up to 70mph. It is protected by whistle boards. The level crossing has an ALCRM score of C7. A 9-day census was undertaken in July 2016 during which 17 pedestrian users were recorded, of whom three were accompanied children and the remainder were adults. The busiest day was Saturday 16 July 2016 when 7 pedestrians were recorded using the crossing<sup>105</sup>.

### **Description of the proposal**

- 5.10.4 It is proposed to extinguish the PROW over E11 and that part of FP EX/41/8 between the railway and its junction with FP EX/41/4 to avoid the creation of a cul-de-sac. On the eastern side of the railway a new field edge footpath will be created from E11 to run to Trees Crossing on Rookery Lane.
- 5.10.5 Pedestrians approaching E11 from the south and west along FPs EX/41/4 or EX/52/18 would be diverted north along FP EX/52/17 to Rookery Lane, then along Rookery Lane in an easterly direction to join FP EX/52/12. Users would then walk along FPs EX/52/12 and EX/21/19, re-join Rookery Lane and cross the railway at Trees level crossing. Users wanting to re-join FP EX/41/8 to the east of the railway would use a new 45m long footpath within Network Rail land and then a new 70m footpath within the field boundary. Both proposed footpaths would be 2m wide and unsurfaced. The diversion route requires users to walk an additional length of approximately 750m depending on their origin and destination.
- 5.10.6 Level crossing infrastructure at Windmills level crossing would be removed. On the west side of the railway, a 1.35m high stock-proof wire fence would be installed. On the east side of the railway, 1.8m high chain link fencing would be installed between Windmills and Trees level crossing to prevent trespass.

---

<sup>105</sup> NR25 3267-LON-E11 p6

## **The Case for Network Rail**

- 5.10.7 This is one of a series of whistle board protected level crossings between Bishop's Stortford and Audley End that are a limiting factor on train speed along this stretch of line. Given the maximum line speed of 70 mph in this area and the distance to traverse the crossing of 9.20m, this crossing would require sightlines of 243m in order to give the user enough time to cross before the train arrives. On the down side looking in a down direction the available sighting is insufficient; this deficiency is mitigated by whistle boards.
- 5.10.8 Based on the location of the crossing point and feedback from public consultation and usage data it is considered that the crossing is used on a regular basis by a relatively small number of people to access the wider footpath network that lies to the west of the railway.
- 5.10.9 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.10.10 The proposed route links into the existing network of public rights of way by providing a north south link between the east side of the railway that improves the link between FPs EX/52/19 and EX/41/8. The proposed route utilises existing facilities on the west of the railway. The route is longer than the existing, however, as it provides for leisure walking it is considered acceptable.
- 5.10.11 Alternative proposals had been considered in the initial stages of the project which required users to walk along London Road and along Rookery Lane to Trees crossing<sup>106</sup>. These proposals did not include the provision of a new footpath along the eastern side of the railway which has been developed to address issues raised under the Stage 1 RSA<sup>107</sup>.
- 5.10.12 ATC data<sup>108</sup> was collected on Rookery Lane between Trees crossing and London Road that showed an average 2-way daily traffic flow of 172 vehicles and 85<sup>th</sup> percentile speed of vehicles of 26.6mph where the posted speed limit is 60mph. The proposal to route part of the alternative route along Rookery Lane where there was no footway was considered acceptable when traffic levels were considered on this section of the route.
- 5.10.13 Network Rail submits that the proposed route is a suitable and convenient alternative for those who currently use E11 crossing when considered in the context of the purpose and characteristics of the existing route and that the Order may properly be confirmed without modification.

---

<sup>106</sup> NR32/2 tab 2 page 115 and tab 3 page 235

<sup>107</sup> NR16 Essex, Thurrock & Hertfordshire Stage1 Road Safety Audit page 3;

<sup>108</sup> NR32/2 Tab 1 p 90

## **Representations**

### **Wendens Ambo Parish Council (REP 02)**

- 5.10.14 The parish council sought clarification with regard to the ownership of the land to be used for the replacement path, whether compulsory purchase of land would be involved and whether the process would be expedited if no replacement path was required.

### **Adriana Forte (SUPP 002)**

- 5.10.15 The crossing is dangerous and should be closed. The warning given by approaching trains can be heard at the supporter's residence in Wendens Ambo.

### **David W Kent (SUPP 003)**

- 5.10.16 The crossing is very rarely used and can only be accessed by crossing ploughed fields. The alternative crossing point at Trees is only 200 yards further north and is accessible by a paved path. The warning whistle board for Windmills is located outside the supporter's property and the noise generated by 150 trains per day is intolerable. The retention of Windmills crossing, and the attendant noise is totally unjustified.

### **Andrea Reynolds (SUPP 005)<sup>109</sup>**

- 5.10.17 Due to the increased frequency and speed of trains along this line crossings such as Windmills are no longer viable and safe places to cross the railway. Installation of a bridge at this location would not be a cost-effective measure given the limited use of the crossing. The reduction of the NTQP in December 2016 to 00:00 – 06:00 has resulted in noise intrusion across Wendens Ambo. The crossing is very rarely used and is less than 100m parallel to the safe crossing at Trees.

## **The Cases of the Objectors who did not appear at the inquiry**

### **Newport Parish Council (OBJ 144)**

- 5.10.18 The crossing is considered to be low risk and one incident elsewhere should not lead to a permanent loss of public rights of way.

### **John Oswin Smith (OBJ 165)**

- 5.10.19 All trains passing over this crossing are either decelerating to stop at Audley End or accelerating from rest at Audley End. In neither case will they have reached maximum line speed of 70mph. The sighting times in all directions is a minimum of eleven seconds whereas the time taken to cross the rails is five seconds. Pedestrians will not walk along FPs EX/21/19 and EX/51/12 and will instead use Rookery Lane which has a dog-leg bend with poor

---

<sup>109</sup> Mistakenly recorded as OBJ 150

visibility. Pedestrians will be put at greater risk along Rookery Lane than they face at Windmills crossing.

### **Leslie Harrod (OBJ 166)**

5.10.20 The crossing is safe; there have been no accidental casualties in living memory at this crossing. The alternative route adds at least a mile along busy roads and is not a viable alternative. There are good sightlines at the crossing in both directions. The crossing is part of an ancient right of way and there is no good reason to close it.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

5.10.21 In relation to landowners, tenants and occupiers of the land adjacent to the crossing, the proposal will have some positive impact upon the land to the west of the railway by removing the burden on the land created by that part of FP EX/41/8 between the railway and FP EX/41/14.

5.10.22 On the eastern side of the railway, the land crossed by FP EX/41/8 would be further encumbered by the creation of a section of footpath leading towards Rookery Lane at Trees crossing. No objection has been received from the affected landowner and it is likely that any adverse impact upon the land can be addressed through section 28 compensation.

5.10.23 There is no evidence before me to suggest that the proposal would have any impact upon statutory undertakers or local businesses.

5.10.24 The principal matter of concern was the impact the closure of E11 would have on the public in terms of the level of risk in walking along Rookery Lane. These are matters for consideration under SOM4(h).

#### **SOM4(b) Impacts on other users**

5.10.25 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.10.26 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.10.27 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.10.28 The proposal would have a positive impact upon agricultural land as the cross-field part of FP EX/41/8 west of the railway would be extinguished. The creation of a new path on the eastern side of the railway would have some adverse impact but as that path will be in the field margin, the impact would be limited. Other than the removal of infrastructure at the crossing and the renewal of fencing at the railway boundary there will be no impact upon the landscape arising from the closure of E11.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.10.29 Supporters of the proposal complain of the noise impact of train horns being sounded outside the NTQP. If E10 were closed the protective whistle boards could be removed and there would be no requirement for trains to sound their horns on approach. Some residents may regard this as a beneficial impact of the proposal.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.10.30 From the location of the crossing and the extent and type of users demonstrated by the 9-day survey and the other evidence of use, it is likely that the crossing is used on an irregular basis by people for recreational purposes to access the local footpath network to the west of the railway from London Road and to undertake circular walks in the local area.
- 5.10.31 The principal issue arising is with regard to the safety of Rookery Lane as part of the proposed alternative route. It is suggested that path users would not follow the proposed route along FPs EX/52/12 and EX/52/19 but would instead follow Rookery Lane and its dog-leg bends. Walking along this part of Rookery Lane may well result in pedestrians who do so coming into conflict with vehicular road users. However, the proposed alternative route provides a means by which those alleged risks can be avoided.
- 5.10.32 The proposed alternative limits the extent of on-road walking. That section of Rookery Lane between FPs EX/52/17 and EX/52/12 is relatively straight and has good sightlines and the use of this section of road would not expose walkers to any greater risk than the users of those paths are already subject to. Rookery Lane is lightly trafficked.
- 5.10.33 The proposed alternative route maintains an east-west link over the railway in the local network, albeit on a more circuitous route. Given the location and type of use to which E11 appears to serve, the additional time and

distance arising from the proposal is unlikely to pose a significant inconvenience to current users of E11.

5.10.34 The Equality and Diversity Overview rating for E11 was green and no DIA was carried out in relation to the proposed diversion. The current crossing is in a semi-isolated position located amongst agricultural fields and as the crossing's name implies, stands in an elevated position in relation to the surrounding land and steps and stiles have to be negotiated to approach the crossing from Rookery Lane. The proposed alternative route to the east of the railway will slope to Trees crossing and may be more accessible to users than E11 currently is. The user census survey did not identify use by any persons with protected characteristics.

5.10.35 I consider that the Secretary of state can be satisfied that there is no indication that people with a protected characteristic would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population), and that the inclusion of E11 in the Order would not appear to lead to a likelihood of the PSED not being met.

### **Overall Conclusion**

5.10.36 Taking account of all of the above, I conclude that the Secretary of State should include E11 within the Order as the proposed route would provide a suitable and convenient alternative for existing users of the crossing.



## 5.11 **E13 Littlebury Gate House**

### **Description of the crossing**

- 5.11.1 Footpath EX/31/30 commences at the northern end of Peggy's Walk and crosses the Liverpool Street to Ely railway by means of pedestrian gates in the railway boundary fences. On the western side of the railway the footpath connects with BOAT EX/31/3 which runs in a generally northerly direction to Strethall Road just to the east of a railway overbridge which carries the road back to the village centre.
- 5.11.2 To the east of the railway is the built-up area of Littlebury village and to the west is agricultural land with an arable field being immediately to the west of the railway.
- 5.11.3 E13 is a passive level crossing where the user is instructed to stop, look and listen for approaching trains before making a decision as to whether it is safe to cross. The railway at this crossing comprises two lines of rails and has a maximum line speed of 70mph. At maximum line speeds and taking into account use of the crossing by vulnerable users, sightlines of 402m are required. Sighting of oncoming trains is insufficient for pedestrians standing on the up and down sides of the railway looking at trains approaching on the up line<sup>110</sup>. Insufficient sighting on the up line is mitigated by a speed restriction of 50mph. The level crossing has an ALCRM score of C4<sup>111</sup>.
- 5.11.4 A 9-day census was undertaken in July 2016 during which 131 users were recorded, of whom 14 were unaccompanied children, 7 were accompanied children, 5 were wheeling bicycles and the remainder were adults. There were no recorded uses by older people, impaired people, wheelchair or mobility scooter users, or people with a pushchair or pram. The busiest day was Saturday 16 July 2016 when 24 pedestrians were recorded using the crossing<sup>112</sup>.

### **Description of the proposal**

- 5.11.5 It is proposed to close E13 to all users and to extinguish existing public rights of way over the level crossing. The proposed alternative route would involve retaining, from Strethall Road, the existing BOAT EX/31/3 for approximately 90m with the remainder of BOAT EX/31/3 (approximately 160m) to the level crossing being downgraded to a footpath. At the transition point between BOAT and footpath, wooden post and three rail fencing and a wooden gate would be provided.
- 5.11.6 A new field-edge footpath would be created from the southern end of the downgraded BOAT parallel to the railway for approximately 320m to meet Littlebury Green Road. At Littlebury Green Road users will walk along the road for approximately 200m crossing the railway tunnel to join a new field-

---

<sup>110</sup> NR31/5 corrects the errata in Mr Fisk's proof in the table at page 58

<sup>111</sup> NR31/5 Arising from a revised risk assessment carried out in November 2017

<sup>112</sup> NR25 3267-LON-E13 p7 in contrast to Mr Fisk's proof at paragraph 17.6 on p57

edge footpath to the south of Littlebury Green Road. This new footpath would be 2m wide and unsurfaced.

- 5.11.7 Level crossing infrastructure at Littlebury Gate House would be removed. On the west side of the railway, 1.8m high chain link fence would be provided and this would extend to Littlebury Green Road adjacent to the proposed footpath to prevent trespass on to the railway. On the east side of the railway, 1.8m high chain link fence would be provided to prevent trespass on to the railway.
- 5.11.8 The diversion route will add an additional 250m to the route if walking from east to west along Littlebury Road from the southern end of Peggy's Walk. The diversion route will add an additional 820m to the route if the user wishes to start his or her journey at the top of Peggy's Walk on the eastern side of the railway and walk to the southern end of BOAT EX/31/3 on the western side of the railway.

### **The Case for Network Rail**

- 5.11.9 E13 is the northern-most crossing on the Liverpool Street to Ely railway included within this Order. It does not have sufficient sighting in all directions, and there is a speed restriction of 50mph (the line speed would otherwise be 70mph) on the 'up' line to mitigate that deficient sighting. If the crossing were closed the existing speed restriction could be lifted. There is thus a clear, and tangible, impact on the operational efficiency of the railway here, as a result of the need to manage risk at the crossing.
- 5.11.10 Network Rail's proposal is to extinguish the short section of footpath passing over the crossing to Peggy's Walk and to divert users south via a new field-edge footpath to Littlebury Green Road. They would then cross the road to walk along the existing verge (or carriageway) and a new section of footpath, until they reach Peggy's Walk, at which point they could continue their journeys as before. A section of BOAT EX/31/3 to the north of the level crossing on the west side will be downgraded to footpath (just to the south of the proposed residential development between the railway and the BOAT) to address concerns raised by the landowner during consultation.
- 5.11.11 The landowner, the Audley End Estate (the Estate), objects to the proposed creation of the two sections of new footpath on its landholding. The Estate questions why the new footpath to the west of the railway could not be provided within Network Rail's land – rather than Estate land – and queries the need for the new footpath to the south of Littlebury Green Road.
- 5.11.12 Mr Kenning explained the difficulties which providing the new PROW within Network Rail's land would create for Network Rail's management and maintenance of the operational railway. The railway is in cutting, with steep chalk embankments that are prone to erosion – as evidenced by the netting secured over the slopes to protect the operational railway from slippage. Locating the PROW on the top of the embankment would impact on future maintenance of the railway in this location as it would, for example, require removal of the boundary fence (between the PROW and the top of the

embankment) every time Network Rail needed access for maintenance of the embankment.

- 5.11.13 This is not a case of comparable 'inconvenience' to Network Rail and the landowner, as suggested by Mr White in questioning. Firstly, it is not only Network Rail which would be 'inconvenienced' if the boundary fence had to be moved for maintenance of the railway, but also users of the PROW, if it needed to be temporarily stopped up or diverted. Indeed, if the Highway Authority considered a temporary stopping up unacceptable, it might require a diversion onto third party land anyway.
- 5.11.14 Further, the location of the alternative route within Network Rail land would not be consistent with the strategic objectives which Network Rail sought to achieve as a footpath with its own land would either require temporary closures for maintenance of the embankment or require possession of the railway whilst maintenance works was undertaken. A footpath on Network Rail's land would affect the resilience and operational efficiency of the railway.
- 5.11.15 The existing PROW across the level crossing is not closely related to the wider public rights of way in the area. E13 provides an alternative access route from the west side of the railway to the village centre. For those residents along Strethall Road wishing to access the village centre a route exists which involves walking along the road on the east side of the railway to access village amenities. The new diversion route maintains the east / west connectivity which E13 currently provides and retains access to the village amenities via Littlebury Green Road.
- 5.11.16 Based on location of the crossing point and feedback from public consultation and usage data it is considered that the crossing is used on a regular basis by a moderate number of people for leisure purposes and a smaller number who used it to access the properties and services in the western part of the village of Littlebury.
- 5.11.17 A Stage 1 RSA<sup>113</sup> concluded that the narrow road width on Littlebury Green Road and the absence of a footway or verge may lead to conflict between pedestrians and vehicles. ATC data<sup>114</sup> showed an average 2-way daily traffic flow of 483 vehicles and 85<sup>th</sup> percentile speed of vehicles of 46.4mph where the posted is 40mph.
- 5.11.18 The DIA undertaken concluded that due to the availability of an alternative means of crossing the railway, the diversion of the path was an appropriate solution. The proposal to create a new field edge path adjacent to the southern side of Littlebury Green Road was required to address the recommendation of the DIA that consideration should be given to route enhancement along Littlebury Green Road<sup>115</sup>. The proposals to include the

---

<sup>113</sup> NR16 tab 4 367516/RPT016 revision B November 2016 p8

<sup>114</sup> NR32/2 tab 1 p54

<sup>115</sup> NR 120

field edge walking were considered appropriate when traffic speeds were considered on this section of the route.

- 5.11.19 The new section of the footpath would fulfil the same purpose as the current footpath route over the level crossing and added only a short additional distance of approx. 300m (max): around 5 mins extra walking. It is considered that this new footpath would provide a suitable and convenient alternative for existing users of E13.
- 5.11.20 NR maintains that it has struck the balance between the competing interests of path users, the affected landowner and its own interests in respect of its proposals for E13 and that the Order may properly be confirmed in respect of E13 without modification.

### **The Cases for the Objectors who did not appear at the inquiry**

#### **Mr & Mrs D G Green (OBJ 001)**

- 5.11.21 The purpose of the current footpath crossing has been misunderstood by Network Rail. Use by recreational walkers using the path from Chestnut Avenue walking to Strehall Road is very much minor use. The crossing is within the village of Littlebury and its main use is by villagers who require access to bus services and the parish church. Closure of the crossing would create great inconvenience to residents who are unlikely to use an alternative path which would increase a journey around the village of between a quarter and a half mile. The proposed closure of this valuable and convenient crossing should be rejected.

#### **S B Thomas (OBJ 182)**

- 5.11.22 Littlebury has very few walks which are traffic-free and safe and as an aging pensioner the route from Church Walk along Peggy's Walk to Merton Place and then home provides an enjoyable walk which would be sadly missed.

### **The Case for the Objector who did appear at the inquiry**

#### **Audley End Estate (OBJ 066)**

- 5.11.23 Mr White is the Resident agent for the Estate. In his submission the proposed alternative footpath does not replace the facility which would be lost by the proposal. The existing crossing links the outskirts of the village with the facilities at its centre; the church, pub, village hall and public transport.
- 5.11.24 Mr White submitted that BOAT EX/31/3 suffers from fly-tipping, litter and the misuse of drugs. If the crossing were to be closed, then the whole of the BOAT should be closed, and pedestrians re-routed via Strehall Road into the village centre.
- 5.11.25 Furthermore, the proposed alternative would emerge on Littlebury Green Road opposite the Henry Seymour Plantation. This would encourage trespass which would lead to a substantial loss of amenity and affect the

commercial use of the plantation. The existing private entrance to the plantation would need to be secured.

- 5.11.26 If the crossing has to be closed and an alternative provided, there is adequate land in Network Rail's possession for the alternative footpath to run within its own property. A footpath on Estate land will affect cross-compliance obligations under the Basic Payment Scheme and will prevent normal agricultural operations, effectively taking land out of production and will require adequate fencing to prevent trespass. The use of Network Rail land may cause it operational difficulties, but these are not insurmountable; maintenance of the cutting face may be required once in five years based on recent experience.
- 5.11.27 The additional footpath adjacent to Littlebury Green Road to link to Peggy's Lane is not justified. The new route goes beyond compensation for the loss of E13; the new route is an improvement of the rights of way network. It is suggested that there is sufficient verge on the south side of Littlebury Green Road for pedestrians to be able to step off the tarmac to avoid oncoming traffic; if it was acceptable for pedestrians to walk east along the road over the tunnel it would be equally acceptable to walk along Littlebury Green Road itself which the public currently do.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.11.28 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.
- 5.11.29 Both the proposed footpath and the field-edge route on the southern side of Littlebury Green Road would run over land which is part of the Audley End Estate. The Estate contends that the proposed path along the western side of the railway would interfere with agricultural operations and would impact upon its cross-compliance obligations and would lead to land being taken out of production. Although the proposal may have an adverse impact upon the landowner's agricultural activities and may lead to a consequential loss if the Basic Payment Scheme is impacted, I do not consider that these are matters which could not be compensated for under s28.
- 5.11.30 The Estate is also concerned that the proposed new route will increase trespass both from the footpath and through any new access to the field which is provided at Littlebury Green Road. The nature of the access from Littlebury Green Road would be a matter for detailed design in consultation with the landowner taking into account those concerns which have been raised. The proposal does not include provision for the proposed field-edge footpath on the western side of the railway to be fenced to prevent trespass over the field; and consequential loss likely to arise can be addressed through the s28 provisions.

- 5.11.31 The Estate contends that the alternative route on the western side of the railway could run within Network Rail land and that the footpath does not have to impact upon private land. Whilst there is a dispute between the parties as to the frequency that Network Rail would require access to the railway cutting for maintenance of the cutting face, any such maintenance would be disruptive to the PROW were it to run at the top of the cutting on Network Rail land.
- 5.11.32 Network Rail seeks to reduce the risk to its infrastructure and to boost the resilience of the network as part of this project. Closure of the crossing would allow the speed restriction currently in place to be lifted, whereas creating a new footpath along the top of the cutting would impose a further constraint upon the operation of the railway and any temporary closure of the footpath for maintenance of the cutting would impact upon path users. Although there is an argument for the alternative route to run on Network Rail's land, I consider that the proposal strikes a fair balance between the competing needs of Network Rail, the public and the landowner. As noted above, compensation for consequential loss arising from this proposal is available to the landowner.
- 5.11.33 Whereas the Estate considers that the southern end of the proposed footpath on Littlebury Green Road would encourage trespass into the Henry Seymour Plantation, it is noted that there is currently no physical barrier (other than prohibitory notices) to prevent such trespass. Appropriate signage along Littlebury Green Road to show where the new footpaths commence may mitigate any risk of trespass.

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

- 5.11.34 As noted above, the closure of E13 would enable Network Rail to remove the temporary speed restriction imposed on the up line due to sighting issues at the crossing. The closure of E13 would have a beneficial impact upon the operation of the railway. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM 4(c) Impact on flood risk**

- 5.11.35 There is no indication that the proposal would have any impact on flood risk.

#### **SOM 4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.11.36 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM 4(f) Impacts on the landscape, agricultural land and forestry**

- 5.11.37 The creation of a new path on the western side of the railway and to the south of Littlebury Green Road would have some impact upon agriculture, however as the paths that would be created would be field edge, the impact

would be limited. Other than the removal of infrastructure at the crossing and the renewal of fencing at the railway boundary there will be no impact upon the landscape arising from the closure of E13.

**SOM 4 (g) Any other environmental impacts including noise and health**

5.11.38 No representations were made regarding this matter.

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

5.11.39 The proposed alternative path in the field to the south of Littlebury Green Road would provide a traffic-free means of travel between the new footpath and the southern end of Peggy's Walk. However, there is little by way of a grass verge for pedestrians to step off onto to avoid oncoming traffic which is shown to exceed the posted speed limits.

5.11.40 The creation of a field-edge path has been proposed to mitigate the problems identified by the RSA and DIA; without this mitigation, the proposal would expose pedestrians to undue risk and would be unsuitable. Some roadside walking is required between the two field-edge footpaths; however, this is located on a section of Littlebury Green Road where there is sufficient verge to provide a step off.

5.11.41 Crossing E13 does not provide any onward link to the local PROW network. The level of use recorded by the 9-day camera census is therefore likely to be predominantly comprised of those persons resident within the village and particularly those persons resident in the immediate vicinity of Peggy's Walk and the houses on Strethall Road. Both Mr & Mrs Green and S B Thomas submit how inconvenient the proposed alternative route would be and the impact its closure would have on those who currently use it. The census data shows a crossing which is reasonably well used at all times during the week by adults and children alike.

5.11.42 As Mr & Mrs Green point out, this is not a footpath in an isolated part of the countryside used by the occasional rambler but a crossing within the confines of the village; the crossing and the public rights of way associated with it appear to serve a utilitarian as opposed to a recreational function. Whilst it would remain possible to undertake a journey between Peggy's Walk and Strethall Road via the proposed alternative route, this would be circuitous and counter-intuitive and would significantly increase journey times and distances. For those who are likely to be the majority of current users, the proposed alternative would be highly inconvenient.

5.11.43 The potential risk to pedestrians posed by walking along Littlebury Green Road is addressed by the provision of the field-edge route to the south of the road. The proposed alternative route would however require pedestrians to cross Littlebury Green Road at two locations and to cross a road where vehicles are known to travel at speeds in excess of the posted limit.

- 5.11.44 The Equality and Diversity Overview rating for E13 was red with a full DIA being undertaken. The DIA recognised that increased walking distances was likely to pose significant problems for people who struggle to walk long distances and that the proposed diversion would add between 300m and 830m to a journey if the crossing were closed. Although the camera census did not suggest that the crossing was used by the elderly or impaired, the evidence from S B Thomas is that the crossing is used by the elderly as part of a recreational walk around the village. The increase in journey distance and time is likely to disproportionately impact upon such users.
- 5.11.45 Whilst the closure of E13 would reduce the risk posed by the crossing to those with protected characteristics, the DIA recognises that the safety benefits would be reduced by requiring people to walk in the carriageway of a 40mph road. Whilst that may be mitigated by the proposed field edge route parallel to Littlebury Green Road, the proposed diversion would require users to cross the road twice.
- 5.11.46 The evidence suggests that the proposal would restrict access for those with mobility impairments and other 'non-visible' characteristics such that including the crossing would fail to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and those who do not share it. Whilst there would be safety improvements for users in removing them from the crossing, those positive benefits are outweighed by the negative impacts which would arise from the proposed alternative.
- 5.11.47 The nature of the proposed alternative route is such that I consider that there is a likelihood that the PSED would not be met if E13 were to be included in the Order.

### **Overall conclusions**

- 5.11.48 Having regard to the above and to all other matters raised in relation to E13, I consider that there are issues with the suitability and convenience of the proposed alternative for those currently using E13. The circuitous alternative route is likely to inconvenience utilitarian users of the crossing. Although closure of the crossing would be of benefit to Network Rail, those benefits do not outweigh the inconvenience that current users would face were the crossing to be closed.
- 5.11.49 I conclude that the Secretary of State should not include E13 within the order as the proposed alternative would not provide existing users of the crossing with a suitable and convenient alternative route.



## 5.12 **E15 Parsonage Lane / Margaretting**

### **Description of the crossing**

- 5.12.1 The level crossing is located on Parsonage Lane which runs south towards the railway past Parsonage Farm Cottage. Over the railway, the existing adopted road continues for approximately 110m in a south-westerly direction parallel to the railway. E15 Margaretting is a user worked vehicular level crossing with MSLs together with a footpath crossing with wicket gates and MSLs. A telephone is also provided for vehicular users to contact the signaller if advice is needed regarding safe use of the crossing.
- 5.12.2 To the north of the crossing is the village of Margaretting with agricultural land lying to the east, west and south. To the south-west of E15 is a cross-roads of public footpaths with FP EX/226/30 running under the railway by means of an underpass.
- 5.12.3 Footpath EX/226/32 runs alongside the south side of the railway from Parsonage Lane in a north-easterly direction. The footpath then crosses beneath the railway via an underpass to the north of E15 and re-joins Parsonage Lane on the north side of the railway.
- 5.12.4 The railway at this crossing comprises two lines of rails and carries passenger and freight trains with a line speed of 90mph. The vehicular crossing has an ALCRM score of B1 with the adjacent footpath crossing having an ALCRM score of C4. ECC considers that the crossing forms part of the public road network whereas Network Rail considers the crossing to be a private accommodation crossing with a PROW on foot only. The crossing has fully paved surfaces that are level and therefore can accommodate pushchairs, wheelchairs and mobility scooters.

### **Description of the proposal**

- 5.12.5 It is proposed to extinguish all public rights of way across the level crossing whilst retaining a facility for private vehicular access over the rails for those with property to the south of the crossing. The infrastructure associated with the pedestrian crossing would be removed and the boundary fence secured to prevent trespass.
- 5.12.6 Network Rail's original proposal was to padlock the remaining vehicular gates but following objections by the owners of Brook Farm who had concerns about access to their property by the emergency services, Network Rail has confirmed that it is no longer proposed to lock the vehicular gates.
- 5.12.7 Those pedestrian users of the crossing would be diverted to FP EX/226/32 which crosses the railway by means of a vehicular underpass to the north of the crossing.

## **The Case for Network Rail**

- 5.12.8 Given the line speed of 90mph at this crossing, sighting of approaching trains is deficient in either direction for a user crossing from the down side<sup>116</sup>. This deficiency is currently mitigated by the MSLs. Removal of the pedestrian crossing would reduce the maintenance and inspection costs associated with the pedestrian crossing.
- 5.12.9 Footpath EX/226/32 utilises an underbridge to the northeast of the level crossing for those members of the public who wish to use the onward PROW. Members of the public who currently use the pedestrian crossing would be diverted towards this footpath, via the underpass, to cross the railway. The additional length of the alternative diversion is approximately 130m. The new diversion route maintains the connectivity for pedestrians via the use of the underpass.
- 5.12.10 There have been previous discussions with the highway authority regarding the status of this level crossing. Network Rail do not believe there are any public vehicular rights over the level crossing (only private rights and public footpath rights) whereas ECC considers it carries a public road. The draft Order, if approved, would authorise the extinguishment of all public rights across the crossing.
- 5.12.11 Network Rail would issue (and record) authorisation to those individuals who are property owners on the south side of the railway and have a need to use the level crossing<sup>117</sup>. The authorised users would continue to use the level crossing as they do today. The active warning system and telephone would be retained.
- 5.12.12 During a nine-day survey conducted in July 2016<sup>118</sup> a total of 68 pedestrians and 6 equestrians and cyclists were recorded using the level crossing with the busiest day being Monday 11 July 2016 when 10 pedestrians were recorded. A total of 20 vehicles were recorded using the crossing during the survey period. A maximum of 8 vehicles used the crossing on a single day during the survey period which was recorded occurring on Wednesday 13 July 2016. Based on location of the crossing point and feedback from public consultation and usage data it is considered that the crossing is used regularly by a relatively small number of people to access the wider footpath network and on a regular basis to access property.
- 5.12.13 A DIA scoping exercise recommended that full DIA was undertaken. The DIA concluded<sup>119</sup> that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route is considered an appropriate solution. Additional works to

---

<sup>116</sup> NR31/1 p 62-63

<sup>117</sup> NR 153

<sup>118</sup> NR25 3267-LON-E15 p7

<sup>119</sup> NR 120

the underbridge such as the provision of handrails or CCTV can be considered with the highway authority at the detailed design stage.

- 5.12.14 Given the existing use of the crossing and the assessment of the proposed alternative in terms of impacts on the environment, users and other impacted parties, it is considered that the proposed route is a suitable and convenient alternative for users of the existing crossing.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Diane & Henry Allen (OBJ 009)**

- 5.12.15 If the crossing were to be removed and the alternative route proposed by Network rail is the only vehicular access available, then access to the house will be curtailed. Furthermore, it would not be possible for service vehicles, deliveries or emergency vehicles to access the property.

#### **Jean and Ken Albon (OBJ 019)**

- 5.12.16 The crossing is used frequently by essential services to reach the property and is the means of access for the emergency services. The underpass to the north east is only suitable for small vehicles. No objection is raised to the closure of the pedestrian access, but total closure of the crossing would cause great difficulty for landowners on the south side of the crossing as the underpass to the northeast is impassable with large commercial or emergency services vehicles.
- 5.12.17 Network Rail's commitment to not locking the vehicular crossing gates is welcomed. The objection is withdrawn on the understanding that the works proposed are carried out to the objector's satisfaction.

#### **Environment Agency (OBJ 172)**

- 5.12.18 The closure would impact emergency service access to a house owned by the Environment Agency. It would also impact the ability of deliveries, utilities and restrict general access to the property. It had been anticipated that the crossing would be used as part of the construction and access routes for the proposed Chelmsford Flood Alleviation Scheme as heavy goods vehicles will be required to carry material and machinery to site. The proposed diversion is to an existing track which is in poor condition and is currently unsuitable for access.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.12.19 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal. Access to the Environment

Agency's property to the south of the crossing would be maintained as retained vehicular crossing gates would not be locked.

- 5.12.20 The concerns raised by Mr & Mrs Albon, Mr & Mrs Allen and the Environment Agency regarding vehicular access to property appear to have been addressed by the commitment given by Network Rail not to lock the vehicular gates at the crossing; access to their properties for emergency and other service vehicles will not be impaired as a result of the proposal.

**SOM4(b) Impacts on other users**

- 5.12.21 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.12.22 There is no indication that the proposal would have any impact on flood risk. Should the Environment Agency seek to use the crossing as part of any future flood defence works, access over the crossing would be a matter to be negotiated with Network Rail.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.12.23 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.12.24 No evidence has been submitted which suggests that the proposal would have any impact upon agriculture or forestry.
- 5.12.25 Other than the removal of the infrastructure associated with the pedestrian crossing and the renewal of fencing at the railway boundary there will be no impact upon the landscape arising from the closure of E15.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.12.26 No representations were made regarding this matter.

**SOM4(e) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.12.27 From the location of the crossing and the extent and type of users demonstrated by the 9-day survey and the other evidence of use, it is likely that the crossing is used on a regular basis by people for recreational purposes to access the local footpath network to the south of the crossing.

- 5.12.28 The proposed alternative route would follow the existing line of FP EX/226/32 from the current pedestrian crossing point to the underpass north east of the crossing. From here, pedestrians would continue along FP EX/226/32 to its junction with Parsonage Lane. Footpath EX/226/32 follows an existing vehicular track which has an uneven surface, but which is suitable for use by pedestrians.
- 5.12.29 The proposed alternative route would increase journey distances by approximately 130m with a commensurate increase in journey times. At a crossing where pedestrian use appears to be of a recreational as opposed to utilitarian nature, such an increase is unlikely to inconvenience users.
- 5.12.30 The Equality and Diversity Overview rating for E15 was red with a full DIA being undertaken. The DIA recognised that increased walking distances was likely to pose significant problems for people who struggle to walk long distances and that the proposed diversion would add approximately 120m to a journey. Whilst this may have a negative impact upon disabled and elderly people and children, that impact is outweighed by the safety benefits which would accrue to such people in not having to cross the railway on the level.
- 5.12.31 The DIA suggested that additional works such as the installation of CCTV and handrails within the underpass should be considered. These are matters for consideration at the detailed design stage. The underpass is broad and has good sight lines through from one side to another and FP EX/226/32 currently passes through it; it appears to be adequate for use by the public and does pose any obvious safety hazards.
- 5.12.32 I consider that the Secretary of State can be satisfied that people with protected characteristics would not be disproportionately affected by the proposed diversion (over and above the effects likely to be felt by the rest of the population). The inclusion of E15 in the Order would not appear to lead to a likelihood of the PSED not being met.

### **Overall conclusions**

- 5.12.33 I conclude that the Secretary of State should include E15 within the order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative route.

### 5.13 **E16 Maldon Road**

#### **Description of the crossing**

- 5.13.1 E16 is a footpath level crossing located on the London to Norwich line to the south-west of Margaretting. Footpath EX/226/21 commences on Maldon Road on the south-eastern side of the railway and runs over pasture to the railway. Beyond the railway, the footpath continues over arable fields to the slip road leading to the roundabout at junction 15 of the A12. The land immediately to the north-west of the railway is given over to arable cultivation whilst the land to the south-east is predominantly arable land interspersed with a few dwellings along Maldon Road.
- 5.13.2 The crossing has been closed under a TTRO since 2013 due to insufficient sighting in 3 of the 4 directions. When open for use this is a crossing where users are required to stop, look and listen for approaching trains. Whistle boards are installed at the crossing to mitigate insufficient sighting but are not considered by Network Rail to provide sufficient protection due to the high frequency and number of trains which run during the NTQP. When the crossing had been open for use, it had an ALCRM score of C4 but currently has an ALCRM score of M13.
- 5.13.3 No census data was collected at the crossing due to the TTRO, but previous estimates have been of zero use by the public as FP EX/226/21 running north from the crossing terminates at the slip road of junction 12 of the A12. Footpath EX/226/21 does not provide any direct onward connectivity with the existing public rights of way network, although it would be possible for users to walk along the verge of the off slip and then along the B1002 to reach FP EX/226/20 to the south-west of White's Place Farm.
- 5.13.4 If the crossing was open, FP EX/226/21 would provide a north-south route between the A12 off-slip to Maldon Road, with onward connections to the PROW network to the south.

#### **Description of the proposal**

- 5.13.5 It is proposed to close the crossing to all users and to extinguish the existing PROW over the entirety of FP EX/226/21 between the A12 off slip and Maldon Road.
- 5.13.6 In mitigation for this loss to the public rights of way network, it is proposed to create a new section of public bridleway running to the south of Whitesbridge Cottages and then in the field edge adjacent to Maldon Road. From the western end of the proposed bridleway, users could then travel along the footway to the side of Maldon Road to its junction with FP EX/226/20 and then on to the B1002.
- 5.13.7 The proposed bridleway would be unsurfaced grass, 3m in width and would be fenced on its southern side to prevent trespass onto neighbouring land.

### **The Case for Network Rail**

- 5.13.8 Network Rail had previously proposed to extinguish the crossing and FP EX/226/21 by means of an application under s118A of the 1980 Act but this was not pursued by the Highway Authority following receipt of an objection.
- 5.13.9 The original proposal put forward as part of the scheme was for the extinguishment of the footpath without making provision for an alternative route. It had been understood that the Highway Authority had been content with such a proposal. However, the Highway Authority later took the view that a diversionary route was required, as it was necessary to compensate for the loss of PROW network which would result from the proposed closure and extinguishment of the PROWs on either side of the railway.
- 5.13.10 The Highway Authority initially requested that Network Rail improve the walking arrangements along Maldon Road, which Network Rail suggested could be met by way of a footpath adjacent to Maldon Road. The Highway Authority considered that a new bridleway (as opposed to footpath) would improve connectivity for cyclists from the bridleway it would connect into. No works to Maldon Road were proposed as horse riders and cyclists could already use the section of road through the overbridge.
- 5.13.11 ATC data<sup>120</sup> was collected on Maldon Road west of Whitesbridge Farm, that showed an average 2-way daily traffic flow of 1,668 vehicles and 85<sup>th</sup> percentile speed of vehicles of 39.3mph where the posted is 60mph. The proposal to provide a means of avoiding roadside walking is appropriate for the observed traffic conditions.
- 5.13.12 Alternative routes suggested by objectors had been considered. The parcel of land to the north of Whitesbridge Cottages between Maldon Road and the field was not wide enough to accommodate a public bridleway; the suggested alternative adjacent to the railway embankment would require users to cross Maldon Road twice; the railway embankment was unsuitable to carry a public bridleway. A footway was marked out on that part of Maldon Road immediately to the east of Tandridge at the entrance to some industrial units; pedestrians would not be at risk from traffic at this point.
- 5.13.13 The PROW over the level crossing has no ongoing wider links to public rights of way to the north of it. Footpath EX/226/21 is essentially a dead end which terminates at the A12. There are no ongoing routes north of E16 and approximately 550m of existing footpath is being extinguished. In response to the loss of footpath the proposal would create approximately 400m of new bridleway. The additional length of the alternative diversion from the level crossing to FP EX/226/20 is approximately 50m.

---

<sup>120</sup> NR32/2 tab 1 p 57

- 5.13.14 It is considered that the proposed new bridleway would maintain links within the network which would otherwise be lost; whilst the A12 is a barrier to onward travel northwards, the B1002 provides connections, at present, to the PROW network further to the west and south west.
- 5.13.15 Mr Smith (OBJ 139), the landowner to the south of Maldon Road, objects to the creation of the new bridleway. On behalf of Mr Smith it was submitted that: (i) a new PROW is not required: FP EX/226/21 should simply be extinguished; (ii) If a new PROW has to be provided, it should have the status of footpath, not bridleway; (iii) the Secretary of State should consider re-routing the proposed PROW to run to the north of Whitesbridge Cottages rather than the south, to mitigate the impact on those properties.
- 5.13.16 By letter dated 5 February 2019<sup>121</sup>, Strutt and Parker confirmed that points (ii) and (iii) were no longer being pursued, and that the objection was maintained only on point (i).
- 5.13.17 In respect of Mr Smith's proposed alternative, it should be noted that this alternative had previously been suggested by the owner of one of the cottages: Mr Marshall (OBJ 18). Ms Tilbrook set out in her evidence why that alternative is not considered appropriate; specifically, that the verge is not considered wide enough to provide a PROW in that location.
- 5.13.18 As set out in responses to Mr Marshall and Mr Slade, Network Rail would be happy to discuss further mitigation measures with the affected owners if the Order is approved; these discussions were ongoing.
- 5.13.19 Network Rail maintains that a bridleway is an appropriate solution in this location, however, if the Secretary of State were to consider that the replacement should be a footpath rather than a bridleway, that would still provide a suitable and convenient replacement for existing users of the level crossing. The interests of other parties, for example the Highway Authority would need to be taken into account with regard to the final status of the alternative route.
- 5.13.20 Network Rail maintains that it has struck the balance correctly in respect of its proposals for E16 and that the Order may properly be confirmed without modification.

### **The Cases of those Objectors who did not appear at the inquiry**

#### **Nick Marshall (OBJ 018)**

- 5.13.21 The closure of this dangerous crossing and the removal of the intrusive noise from train whistles is welcomed. However, the replacement of a footpath with a bridleway is not a like for like replacement. Whitesbridge Cottages will be surrounded on three sides by a bridleway and by a public road on the fourth. There is likely to be an increase in vandalism or theft from these properties. Experience of use of BR EX/226/22 is that horse riders turn right at Maldon Road away from the village towards BR

---

<sup>121</sup> OBJ 139 inquiry document 2



EX/226/11 and BR EX/215/46. The bridleway will take up a significant part of the arable field and will reduce yield and income for the farmer. The new right of way should be located on the strip of land between Maldon Road and the field reducing the impact upon the farmer and residents of Whitesbridge Cottages.

**Peter Slade (OBJ 087)**

- 5.13.22 As a resident of Whitesbridge Cottages Mr Slade has concerns regarding security of his property if a PROW were to run immediately behind his rear garden. Having experienced criminal activity in the field to the rear, he is concerned that a PROW would give a legal right to approach his garden from the rear. No information about proposed boundary treatments have been received from Network Rail.

**Di Smith (OBJ 108)**

- 5.13.23 The closure of FP EX/226/21 is not opposed and as a local resident, Ms Smith has not seen the path being used. The proposed replacement of a north-south footpath by an east-west bridleway is not logical. The proposed alternative will cause security problems for the residents of Whitesbridge Cottages. A path parallel to the railway should be created with users crossing the road at Tandridge.

**The Case for the Objector who appeared at the inquiry**

**Mr A R Smith (OBJ 139)**

- 5.13.24 Footpath EX/226/21 cannot be replaced by an extension to BR EX/226/22; they are separate entities and should be treated as such. The proposed bridleway is an invasion of privacy and raises security concerns for those residents in Whitesbridge Cottages who would be encircled; the bridleway would lead to a loss of valuable agricultural land. A more cost-effective method would be to re-route FP EX/226/21 to run alongside the railway to the road corner known as 'nuns crossing' and then have pedestrians cross the road opposite Tandridge. This alternative would have none of the drawbacks of the proposed bridleway outlined above.
- 5.13.25 Mr Smith had no objection to the closure of E16 however he did not consider that a replacement for this footpath was needed as FP EX/226/21 was not used and did not lead anywhere as it ended on the slip road of the A12. The creation of a footpath on the proposed alignment would have the same impact upon his landholding as the creation of a bridleway. If an alternative route had to be provided, a footpath would be preferable to a bridleway, but consideration should be given to locating the alternative route to the north of Whitesbridge Cottages.
- 5.13.26 Having presented his case at the inquiry, Strutt and Parker clarified their client's position in a letter dated 5 February 2019 in that the request for the alternative route to be a footpath and for that route to run to the north of Whitesbridge Cottages were no longer being pursued.

## **Inspector's Conclusions**

### **SOM4(a) The likely impacts on landowners, 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**

- 5.13.27 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.
- 5.13.28 In terms of the impact upon landowners, those landowners to the north of Maldon Road will benefit from the proposal as their land will be no longer be crossed by FP EX/226/21. The negative impacts of the proposal would be felt by Mr Smith whose land is not currently crossed by FP EX/226/21 but whose land will carry the proposed bridleway.
- 5.13.29 The principal issue between the parties is whether or not an alternative route is required.
- 5.13.30 A number of the objectors submit that FP EX/226/21 is unused as it contains a difficult railway crossing and effectively a cul-de-sac at its northern end where it terminates on the off slip of the A12. Although Network Rail consider that anyone using FP EX/226/21 from its northern end can make their way along the verge of the off-slip to the B1002 to link to FP EX/226/21, Mr Smith contends that the off-slip is dangerous for pedestrians and therefore would not be used; in consequence the footpath is not used and no alternative route is required.
- 5.13.31 Although the off-slip road may be dangerous for pedestrians to walk along, the verge adjacent to it is broad and would be capable of carrying pedestrian traffic should anyone choose to walk along it. Although E16 is currently closed to the public, it would have been possible to undertake a journey between Maldon Road and FP EX/226/20; the extinguishment of FP EX/226/21 would therefore reduce the PROW network in the area.
- 5.13.32 A means of access between the northern end of BR EX/226/22 and the southern end of FP EX/226/20 is currently available along Maldon Road but this requires users to negotiate Maldon Road itself as there is no footway provision on the western side of the road and no footway provision north-east of Tandridge on the eastern side of the road. Although vehicular traffic appears to travel at two thirds of the posted speed limit, users would still be required to walk on a road where traffic can travel at the national speed limit. To extinguish FP EX/226/21 without the provision of an alternative route would subject those who would seek to use the footpath to an increased level of risk. I consider therefore that an alternative route is required at this location if E16 is to be closed and FP EX/226/21 extinguished.

- 5.13.33 Mr Marshall contends that equestrian users of BR EX/226/22 currently turn right at Maldon Road and would not use the proposed bridleway. Given that the nearest existing bridleways are to the east of BR EX/226/22 this is not surprising. Those equestrians who currently ride along Maldon Road are likely to welcome the increased provision that the proposal would bring. The improvement of the rights of way network is one of the aims of the revised NPPF. I consider that the proposal to create a public bridleway to be appropriate in the circumstances.
- 5.13.34 The proposed alternative route would not impact upon access to property; although it is proposed to fence the bridleway from the field to prevent trespass, agricultural access to the field from Maldon Road can be accommodated. This will be a matter for detailed design and consultation with the affected landowner.
- 5.13.35 Concerns were also raised by other objectors regarding security and intrusion. Although the occupiers of Whitesbridge Cottages are not directly affected by the proposal, there are likely to be indirect impacts. Network Rail submit that they are continuing to liaise with the occupiers with regard to mitigating such impacts by screening and fencing.

#### **SOM4(b) Impacts on other users**

- 5.13.36 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.13.37 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.13.38 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.13.39 The creation of a bridleway would impact upon the land over which it would run as it would remove a 3m strip of land from productive use. Any disturbance or loss arising from the proposal would be subject to the compensation provisions under the statutory scheme or under the provisions of s28 of the 1980 Act. Although there would be a negative impact upon the land crossed by the new bridleway, I do not consider these to be beyond the scope of the compensation provisions.
- 5.13.40 Other than the removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of

fencing to prevent trespass from the bridleway, there will be no impact upon the landscape arising from the closure of E16.

**SOM4(g) Any other environmental impacts including noise and health**

5.13.41 Objectors welcomed the proposal to close E16 due to the noise impact of train horns being sounded outside the NTQP. If E16 were closed the protective whistle boards could be removed and there would be no requirement for trains to sound their horns on approach. Some residents may regard this as a beneficial impact of the proposal.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.13.42 The proposed alternative route would provide a link between BR EX/226/22 and FP EX/226/20 which does not require users to walk along a road where there is no footway provision north-east of Tandridge. The proposed alternative would therefore provide a safe means of travel for users wishing to undertake a journey to FP EX/226/20 which would be possible using the existing footpath and crossing.

5.13.43 For those undertaking such a journey, the proposed route would increase the distance of that journey by approximately 50m. This will not present an inconvenience to most users. The current route requires users to negotiate stiles and steps down to the level crossing. The proposed route is relatively flat and would increase accessibility for users and as a link in a recreational network would be suitable for use by the public.

5.13.44 The Equality and Diversity Overview rating for E16 was green and no DIA was carried out following the assessment of the proposal. The increase in length of a journey arising from the diversion would be approximately 50m which is unlikely to inconvenience any users and there should be no disproportionality introduced by the proposed diversion of FP EX/226/21.

**Overall conclusion**

5.13.45 I conclude that the Secretary of State should include E16 within the order as the proposed alternative would provide those who would wish to use the existing crossing with a suitable and convenient alternative route.

## 5.14 **E17 Boreham & E18 Noakes**

### **Description of the Crossings**

- 5.14.1 **E17 Boreham** is located on the Liverpool Street to Norwich railway line and carries BR EX/213/23 over the railway line. Immediately to the south of the railway line and adjacent to it is the on-slip road for the A12. Prior to the construction of the A12 in the early 1970s, BR EX/213/23 continued to the B1137 Main Road south west of Boreham village. The on-slip and the A12 itself has effectively severed the bridleway to the north of the crossing from its continuation into Boreham. The southern approach to the crossing would be along the A12 junction 19 northbound on slip, from the A130 roundabout. There are no formally surfaced paths; users would have to use the highway verge. There are no breaks in the nearside vehicle restraint system on the slip road; it is not thought likely that this route is used by equestrians.
- 5.14.2 To the south-east of the crossing and the A12 is the village of Boreham; to the north and west of the crossing the bridleway runs through what is predominantly arable land which is part of the projected development of Beaulieu Park.
- 5.14.3 E17 is a passive level crossing where the user is instructed to stop, look and listen for approaching trains before making a decision as to whether it is safe to cross. The railway at this crossing comprises two lines of rails and has a maximum line speed of 100mph and E17 is situated on a continuous curve and is deficient in sighting of trains in both directions from the up side of the line. The crossing has been closed under a TTRO since February 2016 due to deficient sighting. E17 had an ALCRM score of B9.
- 5.14.4 No census of use was recorded at E17 due to the TTRO closure; during the level crossing manager's frequent visits to the site prior to the closure, no use of the crossing had been observed.
- 5.14.5 **E18 Noakes** footpath crossing has an ALCRM score of M13; this is because it is classed as a 'sleeping dog'. This means there is no sign of a crossing on site and no means by which a member of the public is able to use the crossing. The crossing is believed to have been removed sometime after the A12 Boreham Bypass was built in the early 1970s and would have originally provided a pedestrian route to the B1137 Main Road in Boreham village; this link has been severed by 6 lanes of traffic which now comprise the A12. Although there is no physical evidence of the crossing on site, a TTRO has been in place since February 2013.
- 5.14.6 E18 Noakes crossing is located approximately 400m north-east of E17 on the same railway line. The crossing is situated at the eastern end of a curve start that limits sighting of trains travelling on the up line.

- 5.14.7 If E18 Noakes level crossing was available for use it would be a passive level crossing where the user is instructed to stop, look and listen for the approaching trains. A 9-day census has not been undertaken at E18 Noakes crossing; during the level crossing manager's visits to the site, there had been no sign of anybody using the crossing.

### **Description of the proposal**

- 5.14.8 It is proposed to create a circular bridleway, linking that part of BR EX/213/23 to the north of E17 with FP EX/213/48 to the north of E18 by creating a new unsurfaced field edge bridleway and by upgrading part of FP EX/231/24 to a bridleway. That part of BR EX/213/23 which runs between the railway boundary and the A12 slip road would be extinguished as would a section of FP EX/213/24 between the A12 and the proposed new bridleway. The existing railway boundary fence would be secured to prevent trespass.
- 5.14.9 A new substation to provide an upgrade to the overhead power supply along the line has been completed and the proposal has been amended to take account of this new substation. The route has also been designed having regard to the future proposed new railway station and the development at Beaulieu Park with changes made to the proposed alignment as a result of consultation with the developer of the Beaulieu site. The alignment was selected to be broadly away from the proposed railway station, so that it should not need to be moved when the new railway station is built.

### **The Case for Network Rail**

- 5.14.10 Boreham and Noakes level crossings are considered together as they share a single solution and ongoing routes to the south are considered to have been rendered inaccessible due to the construction of the A12. There are no facilities for pedestrians to safely cross the crash barriers on the A12.
- 5.14.11 As the north-south routes which E17 and E18 carry had in reality been severed by the A12 and have been unavailable for many years, it was not considered necessary to provide a replacement north-south route. In its place, equestrians and pedestrians would be able to enjoy a circular route to the north of the A12. The new route would mitigate the historic loss of connectivity caused by the A12. The proposal would lead to the creation of approximately 600m of new bridleway and will reinforce the existing network for current users; additional use may underpin the demand for a means of crossing the A12 to be incorporated into any future road scheme.
- 5.14.12 There are no ongoing safe crossing provisions of the A12 to access north and south sides of the dual carriageway for users. The Highway Authority recognised the loss of connectivity arising from the A12 and had suggested the proposal at these crossings should seek to create a circular path by way of mitigation. This was incorporated into the design.
- 5.14.13 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing routes.

- 5.14.14 In terms of the objections to these proposals, it became apparent that the main concern of both the ELAF and the Ramblers was that of prematurity. They consider that, as a potential upgrade to the A12 is being considered by Highways England, and there is a proposed new development to the west, there may be the potential, in future, to reinstate the north-south links historically severed by the A12.
- 5.14.15 The Objectors' position appeared to be that Network Rail should, in effect, 'wait and see' what happens with the proposals to upgrade the A12, before a decision is taken as to whether these crossings should be closed. Due to the severance of the two paths many years ago by the construction of the A12, E17 and E18 are not considered to provide north-south routes today, so NR does not consider the proposed replacement is therefore required to provide a north-south route.
- 5.14.16 Discussions with the Beaulieu Park developer revealed that they had no objection to the proposal as it broadly matched their proposals for a cycleway in that part of the development site. There are no definite timescales for the proposed A12 upgrade – or even a clear indication as to what those upgrade works might entail. ECC have confirmed that they do not consider Network Rail's proposals at E17 or E18 would affect the A12 or station proposals.
- 5.14.17 It is simply not reasonable to expect that where Network Rail has identified an opportunity to rationalise its level crossing estate by means of this project, it should sit back and 'wait and see' what a future (as yet unconfirmed and unconsented) road scheme might do to the area. The proposed bridleway would provide a suitable and convenient alternative to the crossings at E17 and E18 and can be included in the Order.

### **The Case for the Objectors**

#### **The Ramblers (OBJ 148)<sup>122</sup>**

- 5.14.18 The Ramblers object to the proposal to close E17 Boreham crossing and to extinguish a short section of BR EX/213/23 due to the effect this will have on the right of way network in the permanent severing of a historic north-south route across the railway to the Roman Road (which previously was the A12 but is now the B1137).
- 5.14.19 Mrs Evans' evidence was that the proposed A12 improvements northwards from Junction 19 Boreham are in Highways England's current 2014/15-2019/20 investment programme<sup>123</sup>. Condition 26 attached to the planning permission granted for Beaulieu Park requires the developer to "*accommodate each of the following public rights of way as relevant along their existing alignment and without detriment to their historic width, use*

---

<sup>122</sup> OBJ 148 W-034 & W-035 Mrs Evans

<sup>123</sup> OBJ 148 APP 16: Highways England A12 Chelmsford to A120 widening public consultation brochure, Jan–March 2017, pages 5, 9 &12)

- and enjoyment*<sup>124</sup>”; BR EX/213/23 and FP EX/213/24 are among those given particular protection by condition 26.
- 5.14.20 In discharge of Condition 26 the developer has set out its strategy for protecting and enhancing access across and through its site which shows proposed links across the railway line and the A12. Mrs Evans’ considers that the proposed extinguishment of a part of BR EX/213/23 and part of FP EX/213/24, including the railway crossings, appears to contradict the planning condition and the developer's proposals as agreed with Chelmsford City Council.
- 5.14.21 The proposal is not an improvement to the PROW network as BRs EX/213/48 and EX/213/49 already provide an east-west link about 300m north of the proposed new route. To make a north-south connection, a walker or rider on BR EX/213/ 23 would need to make a detour of over 2Km, going west along BR EX/213/23 to Generals Lane and then continue over two roundabouts to the B1137 Main Road, Boreham. The Ramblers contend that extinguishing the north-south off-road connection which legally still exists, will fragment and degrade the PROW network.
- 5.14.22 The Ramblers express their concerns regarding the continued use of “temporary” TTROs to close level crossings for multiple years, as has happened with E17 and E18. The fact that the crossings are currently closed must not, in and of itself, feed into the case for closure here.
- 5.14.23 It is acknowledged that the onward walking route to the south of both crossings has been severed by the widening of the A12, so that it is not possible for users to connect via FP EX/213/23 or FP EX/213/24 with the ROW network to the south of the A12. However, both E17 and E18 still provide north-south connection points. In a planning context in which plans are being developed to improve the A12 and there is a sizeable new development at Beaulieu Park to the north, it is premature to close both of these crossings and to simply replace them with a further east-west connection to the north of the railway line.
- 5.14.24 Network Rail have argued that closure of these crossings does not preclude a third party from seeking to re-establish a connection point (for example, a bridge) over the railway at this location in the future. But there is no guarantee that this will occur.
- 5.14.25 These two crossings have had a history of bad planning, through the arrival of the A12 and the failure for north-south ROW links to be preserved at that time. The Ramblers submit that the mistakes of the past should not be repeated and that these two crossings are left open. If the two crossings are closed, the historic north-south connection will be lost forever.
- 5.14.26 Without prejudice to the above, if the Inspector were minded to recommend the closure of these two crossings, the Ramblers request that he recommend the retention of the footpaths leading to them from the north. This would, at least, make it clear that a historic connection point previously

---

<sup>124</sup> OBJ 148 W-034 page 4



existed. It is noted that Mr Kenning fairly stated, during cross-examination that if the Inspector were minded to do this, he could see no reason why it could not be done.

5.14.27 Finally, Network Rail's case on the need for an alternative route for these crossings was far from clear. It seemed to be accepted that an alternative was needed, particularly as the Highway Authority would not accept an extinguishment. However, in terms of Network Rail's strategic case - that it must provide an alternative means of crossing the railway in order to justify the closure of a level crossing - the east-west link provided in these proposals does nothing of the sort.

### **Essex Local Access Forum (OBJ 142)**

5.14.28 These crossings are in an area that is the subject of major development as part of the Beaulieu Park scheme which is currently under construction. Network Rail will be aware of the new station proposed in this vicinity, along with the related infrastructure. The crossings are situated in close proximity to the A12 and the Boreham interchange and together with the associated north-south public rights of way, they effectively go nowhere.

5.14.29 This area should be looked at holistically in conjunction with the new station, new road infrastructure and the proposed new bridleway network (which of course gives access to walkers, cyclists and equestrians).

5.14.30 Funding is agreed by Government under upgrade the A12 trunk road from junction 19 at Boreham, just south west of the crossings, to junction 25 at Marks Tey although the preferred route has not yet been announced. The A12 upgrade will be an opportunity to link the severed rights of way, both over the new A12 and the railway line.

5.14.31 If these crossings are closed immediately, the opportunity to reconnect severed rights of way will be lost to the detriment of those living in Boreham village who may wish to use sustainable transport via a road & rail bridge to access the new station. Sustainable transport is an aim of central and local Government and the opportunity will be lost if these closures go ahead as planned at this particular time.

5.14.32 It is considered that the closure of these crossings is premature in view of the ongoing and planned development in their vicinity and should be removed from this TWAO.

### **Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

5.14.33 Network Rail's proposals will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposals.

5.14.34 Network Rail has been consulting and discussing the proposals with the developer of the Beaulieu Park scheme and has modified its proposals as a result of that consultation. The proposals do not appear to be in conflict with the developer's proposals for access through and around its site; the proposed section of bridleway parallel to the railway equates with the developer's proposal for a secondary cycleway through the site. The proposals are unlikely to have any adverse impact upon the development site or the deliverability of the development scheme.

5.14.35 The proposals would remove two pedestrian crossings of the railway but would not provide any alternative means of crossing the railway at these locations or within their immediate vicinity. For those who wished to cross the railway via E17 or E18 with a view to an onward journey to Boreham, the proposals would remove that possibility.

#### **SOM4(b) Impacts on other users**

5.14.36 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.14.37 There is no indication that the proposals would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.14.38 The crossings are not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.14.39 From the point where FP EX/213/24 is to be extinguished until the point where a culvert is required to bridge the stream which runs under the railway, the proposed bridleway would run in the margin of an arable field. The land immediately to the north and west is designated to form part of the Exchange commercial area of the Beaulieu Park development. It is not clear whether the land over which the proposed bridleway will run will remain in agricultural use or form part of a green space buffer around the commercial area.

5.14.40 From the proposed culvert to the junction with BR EX/213/23 the proposed bridleway runs over pasture on the northern side of a belt of trees which screen the A12; the proposed bridleway is unlikely to have any adverse impact upon the current use of the land. This section of the proposed bridleway would run over land which is projected to become part of one of the secondary cycleways through the development to provide traffic-free links between the residential and commercial parts of the development site.

- 5.14.41 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass from the bridleway, there will be no impact upon the landscape arising from the closure of E17 and E18.
- 5.14.42 The landscape within the immediate vicinity of the proposed bridleway will change as the Beaulieu Park development proceeds. The creation of a new bridleway is unlikely to have a significant impact upon that changing landscape.
- 5.14.43 The proposed alternative has been designed in consultation with the developer. Any disturbance or loss arising from the proposal would be subject to the compensation provisions under the statutory scheme or under the provisions of section 28 of the 1980 Act. Although there may be a negative impact upon the land crossed by the new bridleway, I do not consider this to be beyond the scope of the compensation provisions.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.14.44 No representations were made regarding these matters.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.14.45 The proposals would remove the two means of crossing the railway and replace them with an additional section of unsurfaced field-edge bridleway to the north of the railway.
- 5.14.46 The principal issue between the parties regarding this proposal is whether the bridleway is a suitable alternative for the two crossings which are proposed to be stopped up. Network Rail have proposed the alternative route in the light of comments received from the Highway Authority who would not accept the extinguishment of the crossings without some other right of way being proposed.
- 5.14.47 At issue for the Ramblers and ELAF is the function of the existing crossings compared with the function of the proposed bridleway; as the proposed bridleway did not lead to any other existing infrastructure which would enable pedestrians to cross the railway, the alternative route was not suitable.
- 5.14.48 Whilst ELAF submitted that the crossings should remain pending the upgrade of the A12 which may provide an opportunity to reinstate the north-south link severed by the road, Network Rail see no reason for their project to be delayed or subject to a scheme which has not been finalised and for which there is currently no timetable for delivery. I agree that to retain E17 and E18 on the hypothetical delivery of a means of crossing the road at some indeterminate point in the future would be unacceptable and that Network Rail's proposals should not be delayed on such grounds.

5.14.49 However, the proposed bridleway does not provide a means by which the public can cross the railway at this point, nor does it provide an alternative means of crossing the railway within the immediate vicinity. For those users who would wish to travel south over either E17 or E18, the proposed replacement of the two crossings with a section of bridleway parallel to the railway would not be either suitable or convenient.

5.14.50 Although the provision of additional capacity to the local public bridleway network is likely to be welcomed, as would the ability to undertake a local circular ride where none is currently available, those benefits would arise as a consequence of the closure of the railway crossings which serve a different function entirely. The provision of an east-west bridleway which does not lead to a crossing point of the railway cannot be described as being a suitable alternative route for those who would use the existing crossings if they were available.

### **Overall conclusions**

5.14.51 I conclude that the Secretary of State should not include E17 or E18 within the order as the proposed alternative would not provide those who would wish to use the existing crossings with a suitable and convenient alternative route.

## 5.15 **E19 Potters**

### **Description of the crossing**

- 5.15.1 E19 Potters is located on the Liverpool Street to Norwich railway line and carries FP EX/105/43 over the railway. Footpath EX/105/43 commences at a junction with FPs EX/105/47, EX/105/46 and EX/105/45 at a point immediately on the south-east side of the railway. The connecting footpaths (EX/105/46 and EX/105/45) provide two routes to the south-east which terminate at the A12 and one route to the south-west which terminates on Oak Road. There is a footway alongside the A12 although there are no formal crossing points of the A12 which would enable users to access the rights of way network to the south of the A12.
- 5.15.2 The crossing is approached from the north over an unsurfaced cross field path which is ploughed and cultivated at periodic intervals. The south eastern approach is an unsurfaced grassed field edge path from the A12. The southwestern approach is an unsurfaced grassed field edge path from Oak Road.
- 5.15.3 The railway and the crossing are located within a predominantly arable landscape and E19 is at the foot of a gentle slope running south-east from a high point near Hoo Hall. There are wicket gates in the railway boundary fence and the crossing is provided with decking boards between the rails to provide a uniform surface over the rails. The infrastructure at the crossing has been upgraded with new gates, steps and surfacing having been provided.
- 5.15.4 The crossing is located to the north of Rivenhall End on the Liverpool Street to Norwich line which has a line speed of 100mph. E19 is a 'passive' crossing requiring users to stop, look and listen for approaching trains. A 9-day census was carried out in July 2016 which showed a total of 78 pedestrians used the crossing during the survey period. The busiest day was Sunday 10 July 2016 when 22 pedestrians used the crossing, of which 12 were unaccompanied children. Sightlines in all directions are sufficient to allow pedestrians enough time to cross the railway once a train has been observed. E19 Potters crossing has an ALCRM score of C5.

### **Description of the proposal**

- 5.15.5 It is proposed to extinguish the footpath over the crossing from its southerly junction with FPs EX/105/45, EX/105/46 and EX/105/47 to a point south of Hoo Hall and to create a new footpath which would run from the residual part of FP EX/104/43 in a generally westerly direction to join FP EX/105/48.
- 5.15.6 Users travelling in a south-easterly direction from the Hoo Hall area would turn right onto the new footpath and travel in a westerly direction towards FP EX/104/48 and then travel south to Henry Dixon Road crossing under the

railway via the underbridge on Oak Road. Footpath EX/105/47 would then allow users to travel to the southern side of the crossing to complete their onward journey.

### **The Case for Network Rail**

- 5.15.7 The proposed diversion route retains the connectivity over the railway via the underbridge at Oak Road. The proposed alternative would result in a maximum increase in journey distance of 820m depending on origin and destination; this is considered acceptable given that the link footpaths in the wider area to the north, east and west of the crossing are over 2Km in length and involve some road walking. The user surveys and the responses generated through the two rounds of consultation suggest that the proposed diversion was suitable in the context of leisure use.
- 5.15.8 On the south side of the railway, onward links in the rights of way network have been severed by the A12 and there are no facilities for pedestrians to safely cross the crash barriers on the road.
- 5.15.9 The infrastructure at the crossing which comprises of steps and pedestrian gates is likely to pose access issues for certain groups such as those with physical impairments and wheelchair users. Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.15.10 As regards the landowner's objections regarding compulsory purchase and trespass, it is considered that the landowner had misunderstood the intentions of Network Rail. A right of temporary access for a limited duration was being sought to enable the removal of level crossing infrastructure E19, to secure the crossing point on each side of the railway to prevent trespass onto and to gain access to construct the proposed new right of way.
- 5.15.11 There were two, main, issues raised by objectors to this crossing. The first related to flood risk on the proposed diversion route. It was acknowledged that part of the proposed diversion sat within areas of flood zone, but this was a common feature of footpaths in the area generally. It was also acknowledged that there might be issues that meant the footpath was boggy underfoot, and that the surfacing was not quite as good. Footpath EX/105/48 is an existing PROW and the highway authority had not raised any concerns about the condition of the path as an alternative; if remedial works (e.g. some surfacing, or providing more drainage) were required, such works could be undertaken as part of providing the new route. The proposed new footpath would also provide a new link to Oak Road to the west (along that part of FP EX/105/48 which runs to Hoo Hall Lodge) – which users could use (as a route with a drier surface) if weather conditions were bad.
- 5.15.12 The second issue related to safety of Oak Road underbridge. An RSA had been carried out in respect of the proposed route, and no road safety issues had been identified. The concerns raised by Mr Evans of the Ramblers as to the width of the footway under the underbridge were not shared; the footway under the bridge was around 1 metre in width which was considered adequate to accommodate the numbers of users that would be

displaced by closing the crossing. Furthermore, there was a priority working system for road traffic passing under the bridge and walkers would spend little time passing through on the footway. In these circumstances, the limited roadside walking being proposed was considered acceptable.

- 5.15.13 It was acknowledged that Ms Tilbrook had not walked the proposed alternative route herself, however it was noted that Mr Evans for the Ramblers acknowledged that he had walked the section of Oak Road under the underbridge.
- 5.15.14 It was noted that both Mr Evans and Mr Hope disagreed with Network Rail's analysis. However, Network Rail stands by its evidence<sup>125</sup> and maintains that the Secretary of State can be satisfied that a suitable and convenient alternative route for existing users will be provided in this location, and that the Order may therefore be confirmed without modification.

### **The Case for those objectors who did not appear at the inquiry**

#### **John Macrae (OBJ 011) Jane Macrae (OBJ 020)**

- 5.15.15 Potters crossing is used several times most weeks from Rivenhall End and is the nearest and safest route to access the open countryside from the village. The crossing is probably one of the safest in Essex and the railway is straight and level giving up to two miles of clear vision in either direction. This crossing has been upgraded with the addition of solar lighting; closure would mean writing off many thousands of pounds of taxpayer's money.
- 5.15.16 The diversion would mean an 800m detour under the narrow Oak Road bridge where there are frequent accidents. The proposed diversion would expose walkers to danger under the bridge in comparison to the relative safety of the existing crossing. The diversion would require some residents to undertake a 1,600m diversion to enjoy the walk they currently have. Furthermore, the proposed alternative footpath is through a permanent bog.
- 5.15.17 This crossing and the next one up the line, provide residents with a delightful circular walk which would be destroyed by the closure of one or both crossings. The proposal ignores the needs of the local community.

#### **Rivenhall Parish Council (OBJ 064)**

- 5.15.18 The Parish Council made an initial response to the consultation by Network Rail. Network Rail have ignored the recommendation made by the Parish Council and has chosen a longer diversion route over a path alongside a local watercourse which has a tendency to become wet and marshy during any wet period of the year, particularly during the winter months.
- 5.15.19 In addition to the propensity for the waterlogging of the proposed footpath, there does not appear to be any good reason for the closure. The railway

---

<sup>125</sup> NR32/1 page 43 and 44

has good visibility for approximately two miles in either direction; there has only been one death at the crossing in the past 20 years. The Parish Council requests that the crossing remains open and the footpath does not get re-routed.

### **The Siggers family and H Siggers and Son (OBJ 173)**

- 5.15.20 Objection is made to the proposed compulsory acquisition of rights in land over plots 19 and 20 being part of the landholding to the south of the railway. Plot 20 represents the only access to the landholding south of the railway. The land lies adjacent to a residential area and a busy road. The land has always been subject to trespass and a locked gate has been installed to address those issues. It is critical to maintain a locked gate at the entrance of the land; a contact number is displayed and access for Network Rail staff is not refused when requested.
- 5.15.21 There are concerns that the land will become the subject of trespass as previously and this will have consequent impacts on farming the land both in cost and time. It will also restrict the use of the land such that it could not be used for grazing livestock which is an enterprise which is particularly sensitive to trespass. Other operations would also be restricted. It would be too high risk to store straw bales on the land as they may be broken or set light to. Trespassers on the land may permit dog fouling or leave debris on the field such as broken glass which would restrict cropping such that crops which go directly into the human food chain can no longer be grown.
- 5.15.22 The proposed closure of the crossing and the diversion of the footpath is supported. Temporary access to the land to enable closure works to be undertaken is not objected to provided that this includes temporary access over Plots 19 and 20. However the compulsory purchase of Plots 19 and 20 is objected to. It is still unclear as to why compulsory purchase of plots 19 and 20 is sought.

### **The Case for those objectors who appeared at the inquiry**

#### **Peter Hope (OBJ 003)**

- 5.15.23 The proposed alternative route is not suitable in its present state as it runs close to Rivenhall Brook and on the occasions when an attempt has been made to use the path it has been waterlogged. Even after two months without rain<sup>126</sup> the footpath is impassable. To reopen this footpath will require substantial engineering works. The current crossing is not unsafe; the sightlines in all directions are very good and the crossing is in daily use by local residents as part of a regular dog-walking route.
- 5.15.24 The proposed alternative goes under the bridge at Oak Road; the footway is considered to be less safe than the railway crossing as the road is subject to a single file priority system for vehicles as there is inadequate onward visibility and no traffic light system. This gives rise to many accidents under

---

<sup>126</sup> Mr Hope's Statement of Case is dated 10 April 2017



the bridge as vehicles fail to give way and puts pedestrians at significant risk of injury. Accidents occur under this bridge every three to four weeks.

- 5.15.25 Potters crossing is used by around 15 people per day who know the crossing well. The crossing has been closed for renovation works and has been upgraded with LED lights on the decking. It would be a waste of public money to upgrade the crossing and then seek its closure; as a taxpayer this is totally unacceptable.

### **Essex Local Access Forum (OBJ 142)**

- 5.15.26 ELAF contends that this closure programme has not been considered in a holistic way taking into account the changes & opportunities presented by the adjacent A12 Boreham - Marks Tey widening scheme and the A120 to A12 new route scheme, both due to be delivered in this area. ELAF therefore contend that the closure programme for the crossings in this area is premature.
- 5.15.27 The A12 widening and upgrading programme, scheduled for 2020-2025, will cover the section of the A12 between junction 19, the Boreham Interchange and junction 25, the junction with the A120 at Marks Tey. The Highways England preferred route announcement had been expected by October 2017 but has been delayed. Four A12 options were consulted on, two of which include a new bypass between J22 Witham north & J23 Kelvedon south. This would result in the current A12 south of E19 Potters and E20 Snivellers becoming a local road which means that pedestrians would be able to cross the road again.
- 5.15.28 Sightlines at E19 are compliant in all directions and apart from one suicide in about 2012 there have been no incidents at the crossing. The alternative proposed does not improve access nor does it enhance the PROW network. ELAF therefore objects to the closure of E19 and requests its removal from the Order. ELAF consider that the closure of this crossing is premature in the light of the proposed A120-A12 road improvement scheme.

### **The Ramblers (OBJ 148)<sup>127</sup>**

- 5.15.29 E19 experiences reasonable levels of usage, notwithstanding its close proximity to the A12 to the south. Ms Tilbrook recognised that this crossing is used by local people and Mr Hope made clear that people use the crossing every day (indeed 20% of the 10 consultation responses to the round 1 consultation stated that they used the crossing daily). The crossing appears to have no specific safety issues, with sightlines well over the minimum requirements.
- 5.15.30 Mr Evans considers that the proposed alternative is unsuitable for two key reasons. Firstly, issues of flooding on the route have not been addressed and, secondly, the requirement to walk on Oak Road will deter people from using it.

---

<sup>127</sup> OBJ 148 W-030 Mr Evans

- 5.15.31 On flooding, the Ramblers are concerned that the surface of FP EX/105/48 is regularly boggy and waterlogged; it lay in flood zone 3. As Mr Evans put it, "FP48 is – at the best of times – wet and boggy – not walkable". Ms Tilbrook, who admitted that she had not been on site herself, reiterated that if there are any problems with waterlogging, that this can be dealt with at the detailed design stage, mentioning the possibility of stone surfacing.
- 5.15.32 In response to questions by the ELAF as to what guarantee Network Rail could give that the waterlogging would be addressed, Ms Tilbrook noted that the level crossing cannot be closed unless ECC is satisfied that the diversion is suitable for use. However, as currently worded, the Order requires certification of the *new* stretch of highway (running east to west on the northern side of the railway) before the crossing is closed. The problems of waterlogging exist on the *existing* FP EX/105/48 being proposed as part of the alternative route.
- 5.15.33 Even if the Highway Authority did need to certify the entire alternative route, including existing footpaths, this is, of course, no legal guarantee that they will require the waterlogging to be addressed. In short, on the basis of the evidence currently available, it would not be possible to conclude that the alternative route is suitable, having regard to the flooding on FP EX/105/48.
- 5.15.34 In addition, the Oak Road underbridge is so narrow that large vehicles cannot pass at the same time and there is a give way / priority working system through the underbridge. Although there is a footway on the north side of the carriageway this is only 1m wide whereas the recommended standard width is 2m with 0.5m allowance on either side. This is not suitable as an alternative.
- 5.15.35 What is more, the alternative route requires users to walk on Oak Road. This is not suitable, and it certainly is not convenient. Ms Tilbrook recognised in cross-examination that there are relatively high levels of vehicles using this road as it links onto the A12 and that the existing priority system recognises there is an issue here that needs to be addressed in terms of being a pinch point.
- 5.15.36 Road walking is noisy, it exposes walkers to traffic pollution, and it increases the likelihood of accidents involving pedestrians and vehicles. Users may perceive this route to be unsafe which could dissuade them from using it.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.15.37 The creation of a new footpath to the south of Hoo Hall is likely to have a negative impact upon the land, although this will be offset by the extinguishment of that part of FP EX/105/43 between Hoo Hall and the

footpaths to the south of the railway. The concerns raised by the Siggers family appear to have been based on a misunderstanding of what was being proposed. It is not intended that Network Rail compulsorily purchases the access to the Siggers' field to the south of the railway or the access track which runs through it; powers are being sought for the temporary use of the gateway and access track for the works associated with the closure of the crossing. The temporary use of the track for access to the railway should not prevent the Siggers family from accessing and managing their land in the way they do now. The measures currently being taken to combat trespass onto the land should not be affected by the proposed works.

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

5.15.38 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.15.39 The closure of the crossing and parts of FP EX/105/43 was opposed due to the risk of the path being flooded when the Rivenhall Brook bursts its banks. The plans submitted by Mr Evans demonstrates that FP EX/105/48 is within flood zone 3 and is at risk of periodic inundation when the brook is in flood. The proposed use of FP EX/105/48 as an alternative would not, however have any adverse impact upon flood risk as no works are proposed in the vicinity of the brook.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.15.40 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.15.41 Other than the removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass from the bridleway, there will be no impact upon the landscape arising from the closure of E19.

#### **SOM4(g) Any other environmental impacts including noise and health**

5.15.42 Other than the submissions made by the Ramblers with regard to the flooding of FP EX/105/48 when the Rivenhall Brook bursts its banks, no representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.15.43 Users approaching the crossing from either side and wishing to continue their journey would be required to undertake an additional journey of approximately 820m. Set in the context of a longer recreational walk from the north or west of Hoo Hall, this does not appear to be inconvenient for those who would have travelled from Witham, Rivenhall or Kelvedon.
- 5.15.44 The objectors drew attention to the use of the crossing by those local to Rivenhall End for a local circular walk and that the circular walk from Rivenhall End via E19 and E20 would be increased by 1,600m as a result of the proposal. However, anyone wishing to walk from Oak Road along FP EX/105/47 via E19 to FP EX/105/48 and on to Hoo Hall as part of such a journey would only be required to walk an additional 100m if using the proposed alternative. For those undertaking a circular walk from Rivenhall End, the additional journey time and distance arising from use of the proposed alternative route is unlikely to present a significant inconvenience.
- 5.15.45 There is however an issue with FP EX/105/48 which the objectors drew attention to. The path is boggy and wet even in otherwise dry conditions; furthermore, my site visits revealed that the footpath is obstructed by a significant ditch which had been dug across the line of the footpath just beyond the bridge that spans the Rivenhall Brook. To cross the ditch involved a detour of approximately 100m to re-join the footpath.
- 5.15.46 In addition to FP EX/105/48 being obstructed and wet even in dry conditions, there is very little evidence of FP EX/105/48 on the definitive line adjacent to Rivenhall Brook as it is overgrown with trees, shrubs and other vegetation. Given the responses to the Ramblers in cross-examination it is unlikely that Network Rail had surveyed FP EX/105/48 other than from maps and plans.
- 5.15.47 In comparison, the current route of FP EX/105/43 is located on dry sloping ground which rises gently from the crossing to Hoo Hall; at the time of my site visits, the path was clearly defined on the ground and firm and dry underfoot. The proposed alternative shares none of these characteristics and cannot be regarded as a suitable alternative to the route proposed for closure.
- 5.15.48 The issue of the prematurity of the closure of the crossing in the light of prospective road schemes in the area was raised in relation to this crossing as it had been in relation to E17 and E18. Network Rail see no reason for their project to be delayed or subject to a scheme which has not been finalised and for which there is currently no timetable for delivery. I agree that to retain E19 on the basis that a connection over the A12 may be possible at some indeterminate point in the future if a road scheme or schemes are progressed would be unacceptable and that Network Rail's proposals should not be delayed on such grounds.
- 5.15.49 Concerns were raised by the objectors about the safety of the proposed alternative route where it passes under the overbridge on Oak Lane. The footway under the bridge is narrow at 1 metre in width but provides a means of passing under the bridge which is segregated from the vehicular traffic travelling along the road. Whilst the single working of the road under

the bridge may give rise to accidents, other than anecdotal reports there was no evidence submitted which demonstrated that use of the footway would expose pedestrians to an unacceptable level of risk. Having had the opportunity to walk along the footway several times, I did not consider myself to be at any greater or lesser risk than when using the E19 crossing itself.

- 5.15.50 Taking all these matters into account, and for the reasons given above, I consider that there are issues with the suitability of the proposed route as an alternative to E19 and that part of FP EX/105/43 proposed to be stopped up.

**Overall conclusion**

- 5.15.51 Considering all the above, and all other matters raised in relation to E19, I conclude that the Secretary of State should not include E19 within the Order as the proposed alternative would not provide existing users of the crossing with a suitable and convenient alternative route.

## 5.16 **E20 Snivellers**

### **Description of the crossing**

- 5.16.1 E20 Snivellers is located on the Liverpool Street to Norwich railway line and carries BR EX/92/34 over the railway which has a line speed of 100mph at this location. Bridleway EX/92/34 commences at the junction of BRs EX/92/16 and EX/92/36 a little to west of Clark's Farm. The bridleway runs in a generally south-westerly direction through a belt of woodland before emerging to run as a field-edge path to cross the railway and join Snivellers Lane. The railway and the crossing are located within a predominantly arable landscape.
- 5.16.2 Snivellers Lane extends for approximately 1.5Km between the A12 to the south of the railway and Hollow Road which lies to the west of Kelvedon. Between the A12 and the railway the lane is an unmade vehicular highway. The crossing and that part of the lane north of the railway is a public bridleway which has a grass and earth surface. A shared footway / cycleway exists on the north side of the A12 between Snivellers Lane and Crabb's Lane.
- 5.16.3 E19 is a 'passive' crossing requiring users to stop, look and listen for approaching trains. There is no telephone at the crossing although a notice advises equestrian users to telephone the signaller for advice before crossing the railway. Mounting blocks are provided either side of the railway so that riders can dismount before leading their horses over the crossing.
- 5.16.4 The infrastructure at the crossing has been upgraded with new gates and surfacing having been provided. A 9-day census was carried out starting on the 9 July 2016, which showed 8 adult pedestrians using the crossing during the survey period<sup>128</sup>. E20 has an ALCRM score of C5. Sightlines in all directions are sufficient to allow pedestrians enough time to cross the railway once a train has been observed.

### **Description of the proposal**

- 5.16.5 It is proposed to extinguish the PROW over the level crossing only, leaving the rights of way on the approaches from the north and south unaffected. It is proposed to create a new section of bridleway from the southern end of BR EX/92/34 unaffected by the extinguishment to run parallel to the railway to link to Cranes Lane to the west of the railway overbridge. From the Cranes Lane overbridge users would be able to make their way to the southern end of Snivellers Lane via Crabb's Lane and the shared footway / cycleway which runs on the north side of the A12.
- 5.16.6 Users travelling south on BR EX/92/34, on reaching the railway, would turn left and head northeast until they reached Cranes Lane at which point, they

---

<sup>128</sup> NR25-3267-LON-E20 P6

would turn right. Travelling in an easterly direction the users would then pass over the railway via an existing overbridge and along Crabb's Lane until they reach the A12 slip road. At this point the users would turn right onto the cycle track alongside the A12 and head southwest to their destination.

- 5.16.7 The level crossing infrastructure at Snivellers crossing would be removed. On the north-west side of the railway a new fence would be installed which would extend to the Cranes Lane overbridge, with fencing installed on the south-eastern side of the railway to tie in with the existing fence to extend to Littlebury Green Road adjacent to the proposed footpath to prevent trespass on to the railway.

### **The Case for Network Rail**

- 5.16.8 E20 is another crossing where historic north-south connectivity has been severed by the A12. It was considered very unlikely that equestrians would take horses along the A12, the creation of a loop of bridleway in place of the crossing was considered to maintain the amenity value of the bridleway for users wishing to undertake a leisure walk or ride.
- 5.16.9 The A12 has created a barrier between the public rights of way to its north and those routes to its south. The creation of a circular walk or ride to the north of the railway which also retains a means of crossing the railway enhances the amenity value of the bridleway whilst retaining a means of access to the A12 and the southern end of Snivellers Lane.
- 5.16.10 It is noted that Kelvedon Parish Council Circular Walk 3 and 4 utilise parts of the infrastructure associated with the level crossing closure. It is acknowledged that Circular Walk 3 would require amendment to use either the new PROW or to make use of Cranes Lane. Circular Walk 3 advises users to 'stop, look and listen' before crossing the line; the safety issue at the crossing which merits such a warning to users would be removed with the closure of the level crossing. Circular walk 4 is unaffected by the proposals to close E20.
- 5.16.11 The proposal to use the footway on the A12 as part of the suggested alternative route was subject to a Stage 1 RSA<sup>129</sup>; no issues were identified following the Audit. ATC data was collected on Cranes Lane south of the railway, which showed an average 2-way daily traffic flow of 51 vehicles and a mean speed of 25.4mph where the posted speed limit is 60mph<sup>130</sup>. The proposals were considered appropriate when the traffic data was considered on this section of the route.
- 5.16.12 Access to the crossing is poor with the routes to the north and south being unpaved and uneven, limiting the possible use of the crossing by wheelchair users and people with limited mobility. In addition, the crossing is not flat so requires users to climb up to the line in order to cross it. Following a

---

<sup>129</sup> NR16 report 354763/RPT222 Revision A page 5

<sup>130</sup> NR32/2 tab 1 p78

- scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.16.13 Those wishing to access the cycleway along the A12 can do so by means of Cranes Lane (crossing the railway at the existing overbridge) to the east of the crossing. As with E17 and E18 it was clear that the primary objection to closure, for both the Ramblers and ELAF, was, again, prematurity. In addition to the A12 upgrade works being considered by Highways England, reliance was placed on ECC's announcement of its preferred option for an 'A120 Braintree to A12 upgrade', in June 2018.
- 5.16.14 NR would highlight that, as made clear in ECC's announcement, whilst ECC has identified its preferred route, the next stage is to recommend it to Highways England and the Department for Transport (DfT) for inclusion in the Road Investment Strategy 2. It is not, therefore, a committed or a funded project at present. Nor is there any guarantee that it will be.
- 5.16.15 Mr Kenning discussed the plan<sup>131</sup> showing the preferred option in some detail in cross-examination; the plan showed that the existing alignment of Snivellers Lane would be obstructed by a culvert and road bridge supports. There are several features which will need to be addressed in providing for a new road junction in the vicinity of the crossing, and it cannot be assumed that a new north-south connection would be provided at E20 if it were to remain in situ.
- 5.16.16 Network Rail's position, therefore, as with E17 & E18, is that it is simply not reasonable to expect that where NR has identified an opportunity to rationalise its network today (as it has with these Order proposals) it should sit back and 'wait and see' what a future (as yet unconfirmed and unconsented) project might do to the area. Contrary to the claim made by ELAF, Network Rail has considered this project holistically; it is a 5-phase project of which the crossings in this order fall to be addressed in phases 1 and 2.
- 5.16.17 Ms Tilbrook explained why the proposed diversion – including Cranes Lane and the A12 footway / cycleway - is considered to be a suitable and convenient replacement for existing users of the crossing. Again, Mr Evans clearly disagrees.
- 5.16.18 However, Network Rail maintains that, for the reasons set out by Ms Tilbrook in her evidence<sup>132</sup>, the Secretary of State can properly be satisfied that the proposed route would provide a suitable and convenient replacement for existing users.
- 5.16.19 Network Rail submits that the Order may properly be confirmed, with the slight modification proposed in respect of the line of the proposed new footpath within plot 03 as shown on Order replacement sheet 30.

---

<sup>131</sup> OBJ 142 inquiry document 4 p4

<sup>132</sup> NR32/1 p 45-46



### **The Case for those objectors who did not appear at the inquiry**

#### **John Macrae (OBJ 11) and Jane Macrae (OBJ 20)**

- 5.16.20 Snivellers Lane is a very ancient route and is one of very few safe local bridleways where horses can be ridden away from hazardous roads. There are mounting points to enable a rider to walk a horse towards the line to see if a train is approaching. Network Rail's proposal is to sever this ancient bridleway and route horse riders alongside the track to the overbridge. Horses and their riders will be in great danger if shocked by the sudden approach of a train.
- 5.16.21 This crossing (and E19) provide Rivenhall End residents with a delightful circular walk in their local countryside. Closure of one or both of these crossings would destroy this pleasure forever. Red and green miniature 'walk / don't walk' lights should be installed at each of these crossings. Network Rail is cavalier in its approach and ignores the needs of the local community.

#### **Kevin Money on behalf of Feering Parish Council (OBJ 145)**

- 5.16.22 Snivellers Lane is an ancient way which pre-dates the railway. Whilst the crossing stays open the lane should be taken into account in the A12 scheme plans and should remain open until a decision is made on the road widening scheme. Network Rail can make the crossings safer by the installation of lights and interlocking gates.

#### **BNP Paribas on behalf of Royal Mail Group (RMG) (OBJ 156)**

- 5.16.23 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.
- 5.16.24 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.
- 5.16.25 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Snivellers Lane.

#### **Kelvedon Parish Council (OBJ 196)**

- 5.16.26 There is no recorded history of accident or misuse at this crossing and the existence of the crossing does not disrupt the operation of trains on the network. The gates are manually operated which does not involve any input from railway staff or cause disruption to journeys. The crossing is intact and

has recently been refurbished by Network Rail with mounting steps provided for equestrian use. Closing the crossing would be a false economy given the recent works.

5.16.27 The crossing is featured in two of the parish Council's walks around the parish and forms part of an ancient byway connecting Rivenhall, Silver End and Kelvedon. The proposed alternative route involving the footway alongside the A12 is circuitous, unpleasant and potentially unsafe for pedestrians. The proposed bridleway does not provide any connectivity for pedestrians south of the railway. An alternative would be to close the bridleway but retain a pedestrian crossing at this point.

### **The Case for those objectors who appeared at the inquiry**

#### **The Ramblers (OBJ 148)<sup>133</sup>**

5.16.28 All the stages of the development of Network Rail's proposals have included severing the ancient north-south link along Snivellers Lane. The proposal fragments and degrades the public rights of way network contrary to the 4<sup>th</sup> objective of ECC's ROWIP<sup>134</sup>. The proposed bridleway is wholly to the north of the railway and does not provide a complete diversion; the rest of the proposed route relies upon the use of existing roads.

5.16.29 Mr Evans considers that the proposed route is unsuitable; walking or riding alongside a railway fence will be noisy and unpleasant. The proposal does not enhance the network as it simply links BR EX/92/34 with Cranes Lane and the A12 or a return to the junction of BRs EX/92/16, EX/92/34 and EX/92/36. To reach the footpaths at Hole Farm would require an extra 20 minutes of walking along the A12 with noise, slipstreams and polluted air. Although it is not feasible to cross the A12 from Snivellers Lane there are various route enhancements being brought forward.

5.16.30 Furthermore, Cranes Lane, Crabb's Lane and the overbridge are narrow with no verges; although these roads are lightly trafficked, forward visibility is poor in places. In contrast, the views up and down the railway line at the crossing are extensive.

5.16.31 Network Rail have not justified the need to close this level crossing. The sightlines at the level crossing are clearly compliant and there have been no reports of poor user behaviour or misuse. The alternative proposed by Network Rail only provides another east-west link to the north of the railway. It does not provide a replacement north-south crossing point, other than the crossing point at Crabb's Lane which already exists for users today.

5.16.32 Furthermore, the Ramblers see Network Rail's proposals for E20 as unduly premature in light of current plans to upgrade the A120. The plan submitted to the inquiry which showed ECC's preferred route for this scheme, illustrates how pedestrian routes have been factored in. There is a real risk

---

<sup>133</sup> OBJ 148 W-031 Mr Evans

<sup>134</sup> OBJ 148 36 APP 1 at p28

that, were the crossing to be closed through this Order, the existence of a historical north-south connection point at this location will be overlooked when the A120 scheme moves forward.

5.16.33 Highways England, who are expected to promote the A120 scheme, would likely consider what pedestrian linkages can be justified, having regard to what currently exists at the time. That is why it is important not to prematurely sever this north-south link.

5.16.34 It is reasonable to expect Network Rail to wait for the outcome of the road scheme having regard to the public health implications associated with walking. Network Rail is unnecessarily jumping the gun by seeking to use this Order to prematurely close this connection point in circumstances where the crossing is not unsafe. There appear to be no planned enhancements on this stretch of line and the crossing is being regularly used by local people.

#### **Essex Local Access Forum (OBJ 142)**

5.16.35 ELAF contends that this closure programme has not been considered in a holistic way taking into account the changes & opportunities presented by the adjacent A12 Boreham - Marks Tey widening scheme and the A120 to A12 new route scheme, both due to be delivered in this area. ELAF therefore contend that the closure programme for the crossings in this area is premature.

5.16.36 Running alongside the A12 consultations in 2017, were consultations on a new route for the A120 between Braintree and the A12. In June 2018, ECC, following Highways England procedures, announced route D as their preferred route option for the new A120. ECC have now presented this option to Highways England and the DfT for inclusion in the RIS 2 funding programme (2020-2025).

5.16.37 In Option D, the A120 would join the (new) A12 just south-west of Kelvedon in the vicinity of Snivellers Lane. If Snivellers crossing E20 is closed a historic connection is lost and the crossing is not there to be taken account in the detailed planning for the new A12 and its connection with the new A120. As stated in ELAF's proof, the alternatives proposed for E19 & E20 are not considered suitable as they do not improve access or enhance the PROW network; the historic north-south connectivity is lost as NR's proposal is a bridleway solely on the north side of and alongside the railway line.

5.16.38 Sightlines at E20 are compliant in all directions. The alternative proposed does not improve access nor does it enhance the PROW network. ELAF therefore objects to the closure of E20 and requests its removal from the Order.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.16.39 The proposal would create a new section of public bridleway running parallel to the railway. The route shown in replacement sheet 30 has been agreed with the landowner to avoid disturbance to a mature tree adjacent to the railway boundary.
- 5.16.40 Although there would be an adverse impact upon the land by the creation of the new public bridleway, there does not appear to be any impact which could not be addressed through detailed design or the section 28 compensation provision.
- 5.16.41 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However, there are no private or public vehicular rights over E20 and the closure of the crossing to public equestrian and pedestrian traffic would not have any impact upon RMG's existing vehicular use of that part of Snivellers Lane to the south-east of the railway. It is possible that the postman may utilise E20 to cross the railway as part of the postal delivery round; however, no evidence was submitted to suggest that the closure of E20 would adversely impact upon RMG's ability to deliver to those properties along Crabb's Lane or Cranes Lane.

#### **SOM4(b) Impacts on other users**

- 5.16.42 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.16.43 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.16.44 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.16.45 The creation of a bridleway would impact upon the land over which it would run as it would remove a 3m strip of land from productive use. Any disturbance or loss arising from the proposal would be subject to the

compensation provisions under the statutory scheme or under the provisions of section 28 of the 1980 Act. Although there would be a negative impact upon the land crossed by the new bridleway, I do not consider these to be beyond the scope of the compensation provisions.

5.16.46 The variation of the line of the proposed bridleway within plot 03 and shown on replacement sheet 30 has been agreed to avoid damage to a mature tree situated close to the field boundary and an adverse impact upon the landscape. Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass from the bridleway, there will be no discernible impact upon the landscape arising from the closure of E20.

**SOM4(g) Any other environmental impacts including noise and health**

5.16.47 The objectors submit that riding a horse alongside the railway would be unpleasant due to noise from trains and that horses may be spooked by the sudden appearance of a train on the rails. The proposal would not however result in an increase in the level of noise present in the environment. Current users of E20 will be aware of the noise arising from an operational railway and whilst proximity to that noise may be prolonged as the new bridleway would run parallel to the railway, some mitigation of that noise is present as the railway is set in a cutting as it approaches the Cranes Lane overbridge.

5.16.48 Although the objectors contend that the proposed route along the footway / cycleway of the A12 would subject users to traffic fumes and noise, current users of E20 wishing to travel onward from the southern end of Snivellers Lane have to endure such fumes and noise as walking to connecting public rights of way already involves a journey alongside the A12.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

5.16.49 The main identified use of the crossing appeared to be leisure use as part of a circular walk in the immediate area. Although the crossing carries a public bridleway, the 9-day survey did not record any use of the crossing by equestrians and recorded limited use by pedestrians.

5.16.50 Both the Ramblers, ELAF and Feering Parish Council considered that the proposed closure of E20 was premature in the light of the proposed road schemes which would reconfigure the A12 and A120 in the vicinity of Snivellers Lane; closure of the crossing would prevent the north-south link over the railway from being incorporated into the design of the new road scheme.

5.16.51 The plan showing ECC's preferred route for the A120 intersection shows however that the part of BR EX/92/34 north of the crossing retained under

Network Rail's proposals would be obstructed by the culvert and bridge support works necessary to carry the new road over the railway. If ECC's preferred road scheme were to be implemented, that part of BR EX/92/34 being retained would have to be accommodated.

- 5.16.52 Network Rail see no reason for their project to be delayed or subject to a delay arising from a separate proposal which has not been finalised and for which there is currently no timetable for delivery. I agree that to retain E20 on the hypothetical delivery of a means of crossing the railway and the revised A12/A120 at some indeterminate point in the future would be unacceptable and that Network Rail's proposals should not be delayed on such grounds.
- 5.16.53 The proposed alternative would run as a field-edge bridleway parallel to the railway to link with Hamilton's bridge on Cranes Lane. Although the proposed route is somewhat circuitous in that users travelling along Snivellers Lane in a generally south-west direction are then diverted north-east to the overbridge, the proposed alternative does provide a means of crossing the railway to the footway / cycleway on the north side of the A12. The proposed alternative would also permit a short circular walk or ride incorporating BR EX/92/24 and Cranes Lane which is not currently available. For those equestrians who use Snivellers Lane but who do not cross the railway at E20, this is likely to present a new opportunity within the area.
- 5.16.54 There are limited verges along both Cranes Lane and Crabb's Lane for pedestrians to 'step off' to avoid oncoming traffic. However, both lanes are lightly trafficked, and the ATC data shows that vehicles travelling along the lanes do so at speeds considerably below the posted speed limit. The alternative route links to the cycleway / footway on the north side of the A12 which permits users to travel to the southern end of Snivellers Lane.
- 5.16.55 Although Kelvedon Parish Council consider the proposal does not provide connectivity for pedestrian users of the crossing, there is no means of crossing the A12 from the southern end of Snivellers Lane; anyone wishing to access the PROW network to the south of the A12 which commences at Hole Farm has to either walk west along the A12 to cross the road at Rivenhall End or walk east to cross the road at Crabb's Lane.
- 5.16.56 For those users of Snivellers Lane who wish to travel along the PROW network to the south of the A12, the proposed alternative would provide a more direct link to the network which starts at Hole Farm. From the southern end of Crabb's Lane, there are footways on the south side of the A12 which lead to Hole Farm separated from the road by a vehicle restraint barrier. Although users would be subject to traffic noise when walking along the A12, anyone wishing to travel from Snivellers Lane to Hole Farm will be currently subject to such disturbance and would not be unduly inconvenienced as a result.
- 5.16.57 The Equality and Diversity Overview report rating for E20 was green and no DIA was carried out. The increased distance a user would have to travel to arrive at the southern end of Snivellers Lane from the northern side of the railway might be an issue for some users, but taking into account the

physical condition of the existing approaches to the crossing and its isolated, rural position, I consider that no disproportionality should arise from the proposed diversion and that the Secretary of State can be satisfied that the PSED would be met.

5.16.58 Taking all these matters into account, and for the reasons given above, I consider that the proposed route would provide a suitable and convenient means of crossing the railway for current users of E20.

**Overall conclusion**

5.16.59 Having regard to the above and to all other matters raised in relation to E20, I conclude that the Secretary of State should include E20 within the Order as the route described in the filled up Order dated 13 February 2019 and shown on Replacement Sheet 30 would provide existing users of the crossing with a suitable and convenient alternative route.

## 5.17 **E21 Hill House 1**

### **Description of the crossing**

- 5.17.1 Footpath EX/78/7 crosses the Liverpool Street to Norwich railway north-east of the village of Feering. Marks Tey lies to the north-east and Kelvedon further to the south-west beyond Feering. The footpath commences on Little Tey Road and runs in a generally south-easterly direction crossing the railway via E21 and runs on to an access road which then continues to the A12. The surrounding area is predominantly arable agricultural land; there is a farm business located immediately to the south of the railway crossing.
- 5.17.2 The footpath is a field-edge path between Little Tey Road and the crossing and is unsurfaced and does not provide a direct connection to any other PROW in the local network. South of the railway, the footpath runs between farm buildings to the access road leading to the A12. To the north-east of E21 are two other public rights of way which also provide north-south crossings of the railway at Hill House 2 and Great Domsey (E22).
- 5.17.3 The crossing is approached from the north via an unmarked grass surfaced path with stiles in the railway boundary. E21 is a passive railway crossing which requires users to stop, look and listen for approaching trains. The railway is comprised of two lines of rails with a maximum line speed of 100mph. Sighting distances are satisfactory in all directions; the crossing has an ALCRM score of C10. A 9-day survey of use conducted in September 2014 recorded nil use of the crossing during that period.

### **Description of the proposal**

- 5.17.4 It is proposed to close E21 to all users and to extinguish the public footpath rights over the crossing and that part of FP EX/78/7 immediately to the south of the crossing together with any PROW which may have been acquired over the non-definitive line where the walked route passes between farm buildings. On the northern side of the railway, users would be diverted to the north-east via a 2m wide unsurfaced footpath approximately 170m in length running parallel to the railway in the field margin to connect with BOAT EX/78/5. Users will then cross the railway via Hill House 2 footpath level crossing to connect with the access road which leads south-west to the A12.
- 5.17.5 The crossing infrastructure at E21 would be removed and the boundary fence of the railway would be secured to prevent trespass onto the railway.
- 5.17.6 The total additional length a user will be required to walk is approximately 225m with north-south access over the railway being maintained via Hill House 2.

### **The Case for Network Rail**

- 5.17.7 The level crossing provides connectivity between the wider network of public rights of the way in the area to the north and south of the railway.



The ongoing public rights of way are some distance from the level crossing / affected footpaths and are accessed via the rural road network.

- 5.17.8 The crossing is therefore considered to be unsuitable for wheelchair or pushchair users and may present some challenges to any users with mobility difficulties. Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.17.9 The new route to the east of the level crossing, and the use of Hill House 2 level crossing, maintains north south links over the railway. It is believed that this crossing is very rarely used; the Level Crossing Managers have never seen anybody use the crossing during the course of their inspections; the 9-day census data supports the view that the crossing is little used.
- 5.17.10 It is considered that the likely use of this crossing would be for leisure purposes by walkers seeking to access the wider footpath network. Users would be faced with an additional 225m of walking as a result of the diversion but given that the route is most likely to serve recreational walking, this increase in journey time and distance is considered acceptable.
- 5.17.11 The suggestion put forward by Mr Crayston was considered but not pursued due to other objections and a lack of support from the Highway Authority who would not agree to the extinguishment of the entirety of FP EX/78/7. Furthermore, an alternative route has to be provided unless it can be demonstrated that no alternative is required. Although Mr Crayston considers that the creation of a footpath in the field margin will have no benefit to wildlife, the project is unlikely to have an adverse effect upon the environment<sup>135</sup>.
- 5.17.12 Following consideration of the level of use of E21 and an assessment of the proposed alternative in terms of impacts on the environment, users and other impacted parties, Network Rail remains satisfied that the proposed route is suitable and convenient when it is considered in the context of the purpose and characteristics of the existing route.

### **The Case for the Objector<sup>136</sup>**

#### **J R Crayston & Sons Ltd (OBJ 119)**

- 5.17.13 The closure of E21 is not disputed; it is seldom used and is an unnecessary hazard to users on the railway and the footpath. The proposed alternative footpath is however not required as FP EX/78/24 and BOAT EX/78/5 between the railway and Little Tey Road serve the same purpose.

---

<sup>135</sup> NR11 and NR 155

<sup>136</sup> J R Crayston & Sons did not appear at the inquiry, nor were they represented. E21 was considered by means of written representations

5.17.14 Footpath EX/78/7 is seldom used and there is no case to provide an alternative path alongside the railway in the field margin. If this footpath is created, the field would have footpaths on three sides and a road on the fourth. There would be no benefits to wildlife or agricultural activities; the creation of another path would be detrimental to both. The proposed alternative path should be removed from the proposals.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

5.17.15 The proposed creation of an additional footpath would have an adverse impact upon Messrs Crayston's landholding which may impact upon the productivity of the arable field. Whereas it is contended that the provision of a new footpath would have adverse impacts upon agriculture and wildlife, no evidence was submitted to support this contention.

5.17.16 The 9-day survey of use of the crossing revealed nil use of the crossing by the public during the survey period and this absence of use is reflected in the observations made by both the Level crossing Managers and by Messrs Crayston. It is unlikely that closure of the crossing would have any adverse impact upon the public.

5.17.17 Although the creation of a new footpath may impact upon the agricultural capacity and productivity of the field at issue, there do not appear to be impacts in this respect which could not be dealt with through detailed design and the section 28 compensation provisions.

#### **SOM4(b) Impacts on other users**

5.17.18 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.17.19 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.17.20 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.17.21 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass from the bridleway, there will be no impact upon the landscape arising from the closure of E21.

#### **SOM4(g) Any other environmental impacts including noise and health**

5.17.22 No representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.17.23 The proposed alternative route would be an unsurfaced grass footpath of a similar character to that part of FP EX/78/7 north of the railway which is unaffected by the closure of E21.

5.17.24 Users will be required to undertake an additional 225m of walking as a result of the closure of E21; however, to reach the crossing, users are likely to have travelled some distance along the public rights of way network and the increase in journey time and distance is unlikely to inconvenience those who may wish to use E21.

5.17.25 The alternative route maintains the north-south connectivity of the rights of way network over the railway albeit approximately 170m further to the east; Hill House 2 crossing will therefore serve as a suitable alternative means of crossing the railway.

5.17.26 The Equality and Diversity Overview report rating for E21 was green and no DIA was carried out. The increased distance a user would have to travel from E21 to reach Hill House 2 might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary and the isolated, rural location of the crossing, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion and that the Secretary of State can be satisfied that the PSED would be met.

5.17.27 Taking all these matters into account, and for the reasons given above, I consider that the proposed route would provide a suitable and convenient means of crossing the railway for those who may wish to use E21.

#### **Overall conclusion**

5.17.28 Considering all the above, and all other matters raised in relation to E21, I conclude that the Secretary of State should include E21 within the order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative route.

5.18 **E22 Great Domsey**

**Description of the crossing**

- 5.18.1 Footpath EX/78/3 crosses the Liverpool Street to Norwich railway north-east of the village of Feering. Marks Tey lies to the north-east, Coggeshall to the north-west and Kelvedon further to the south-west beyond Feering. The footpath commences on Little Tey Road to the north-west of BOAT/78/5 and FP EX/78/7 and runs in a generally south-easterly direction crossing the railway via E22 to the A12. There is no means of crossing the A12 at this location.
- 5.18.2 To the north of the crossing FP EX/78/3 is an unsurfaced field edge or cross field path which crosses land in arable cultivation. To the south of the crossing, FP EX/78/3 is a cross field path running over an arable field. The surrounding area is predominantly arable agricultural land.
- 5.18.3 E22 is a passive railway crossing which requires users to stop, look and listen for approaching trains. The railway is comprised of two lines of rails with a maximum line speed of 100mph. Sighting distances are satisfactory in all directions; the crossing has an ALCRM score of C10<sup>137</sup>. A 9-day survey of use commenced on 9 July 2017 which recorded nil use of the crossing during that period.

**Description of the proposal**

- 5.18.4 It is proposed to close E22 to all users, extinguishing the existing public footpath rights over the crossing and that part of FP EX/78/3 between the crossing and the A12 to avoid the creation of a cul-de-sac to the south of the railway.
- 5.18.5 On the northern side of the railway, users would be diverted via a new 2m wide unsurfaced footpath, approximately 170m in length, running parallel to the railway to the nearby overbridge. The footpath would then continue over the overbridge to the A12 along Domsey Chase which provides access to Great Domsey Farm and the cottages located to the south of the railway. At its junction with the A12, Domsey Chase has a wide splay to allow traffic to leave and join the dual carriageway; the field hedges have been reduced in height to increase visibility to and from the A12. From the southern end of Domsey Chase, pedestrians would be able to travel along the footway / cycleway on the north side of the A12 to reach the original terminal point of FP EX/78/3.
- 5.18.6 The crossing infrastructure at E22 would be removed and the boundary fence of the railway would be secured to prevent trespass onto the railway.
- 5.18.7 The total additional length a user will be required to walk is approximately 450m to travel from north of the railway to the original terminal point of FP

---

<sup>137</sup> Mr Fisk oral evidence based on updated risk assessment in 2018 which reflects the lack of use of the crossing

EX/78/3 on the A12. North-south access over the railway will be maintained via the overbridge on Domsey Chase.

### **The Case for Network Rail**

- 5.18.8 The initial proposal had been to extinguish the footpath passing over the level crossing in its entirety, without provision of a replacement route due to the proximity of BOAT EX/78/5 and Hill House 2 crossing which provided a north-south link over the railway. However, consultations with the Highway Authority revealed that this approach would not be supported, and that provision of a diversionary route was required so that connectivity could be retained. The current proposal is a result of those consultations; it is understood that the Highway Authority does not object to the current proposal. Although the 9-day survey recorded no use of the crossing, feedback from the public consultation on the proposal suggested there was some limited use of the crossing by the public.
- 5.18.9 The proposed alternative footpath will run along Domsey Chase, the private road that provides access to a number of properties. No physical works are proposed to Domsey Chase, merely the creation of a PROW on foot over it. The existing surface of Domsey Chase, partly concrete partly asphalt is considered to be suitable for pedestrian traffic. None of the proposed works to secure the crossing were likely to have any adverse impact upon the water table and are sufficiently small-scale and removed from the cottages to not have any adverse effect upon the well water at Domsey Cottages.
- 5.18.10 Accessing the crossing involves walking down steps on one side; the other side of the crossing is uneven and gravelled. The crossing is therefore unsuitable for wheelchair or pushchair users and may present some challenges to any users with mobility difficulties. Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.18.11 The proposal to use the footway on the A12 was subject to a Stage 1 RSA; no issues were identified following the Audit. The use of Domsey Chase private road and bridge is considered to be an acceptable rural route which would not give rise to risk to pedestrians as it is the type of access track which is shared by public rights of way elsewhere within Essex. An alternative route using the road bridge south of Hill House 1 was discounted due to the significant amount of road walking such a diversion would entail.
- 5.18.12 It is accepted that the objectors may be entitled to compensation in line with the provisions in the Order and the compensation code.
- 5.18.13 Consideration had been given to the potential conflict between vehicles turning into Domsey Chase from the A12, and walkers on Domsey Chase (or on the footway/cycleway along the A12). It is acknowledged that there is no deceleration lane on the A12 for those turning left into Domsey Chase, however, due to the geometry of the junction, the speed with which vehicles were likely to be turning in, the availability of verge for pedestrians to stand in (which could be subject to some vegetation removal, if required)

and the limited pedestrian use of FP EX/78/3 , it was not considered this would be a cause for concern.

- 5.18.14 As regards potential conflicts of vehicles/pedestrians using Domsey Chase itself, such conflicts were unlikely to arise, not least having regard to the likely usage numbers, and the fact that vehicles would no doubt adopt an informal 'give way' system. As Ms Partridge confirmed in her evidence, the track is of insufficient width to accommodate two vehicles today, so such an arrangement must already be in place whenever vehicles encounter other vehicles on the track or residents or their visitors.
- 5.18.15 Whilst Ms Partridge's concerns are therefore acknowledged, NR maintains that the Secretary of State may be satisfied that from Network Rail's experienced and objective appraisal of the proposed route<sup>138</sup>, that there is no reason to conclude that the proposed diversion route would not provide a suitable and convenient replacement for existing users of the crossing – or would materially affect the usage of the track by those entitled to use it today.
- 5.18.16 Similarly, whilst Ms Partridge has raised concerns about potential security issues for her property if Domsey Chase is dedicated as a PROW and members of the public are permitted to walk down the track, that concern must be considered in the context of the current usage of the track. This is not a gated track accessible only by the property owners along it. It is an open access to the A12, and the track serves not only the 5 houses neighbouring Ms Partridge's house, but also the farm and business to the west. As Ms Partridge fairly accepted in cross-examination, Domsey Chase is therefore usable, and used, by 'strangers' today.
- 5.18.17 Ms Partridge also raised a concern about services passing under the road, and the ability to access the same if the track was dedicated as a PROW. It is acknowledged that there are procedures which would need to be followed for temporary closure of public rights of way for emergency and other purposes<sup>139</sup>.
- 5.18.18 Network Rail maintains, therefore, that the Order may properly be confirmed without modification in respect of E22.

### **The Case for those Objectors who did not appear at the inquiry**

#### **Whirlledge & Nott on behalf of Mr & Mrs Robert Cock (OBJ 126)**

- 5.18.19 The current level crossing and footpath should be maintained and remain open. The footpath is infrequently used and partly redundant and has minimal if any use. The footpath does not pose a safety risk to the railway.
- 5.18.20 If Great Domsey crossing were to be closed, then the whole of FP EX/78/3 should be extinguished and not re-routed along Domsey Chase; this should

---

<sup>138</sup> NR/32/1 pages 48 & 49 and oral evidence

<sup>139</sup> NR 198

be done due to the limited use of the footpath. The footpath terminates on the A12 and there is no connection to the wider public footpath network.

- 5.18.21 If the crossing were to be closed and the footpath re-routed, then compensation and re-imburement of appropriate legal and professional fees should be made for disturbance and loss.

### **The Case for the Objector who did appear at the inquiry**

#### **Ms Kat Partridge (OBJ 205)**

- 5.18.22 Ms Partridge purchased her property on the understanding that it was served by a private access road; in her view opening the road to the public would compromise security at the property; increased access by pedestrians would leave her property and equipment more vulnerable.
- 5.18.23 The grass verges at the side of Domsey Chase are privately owned and cannot be fenced off due to covenants requiring access for agricultural vehicles over the road and adjacent verges. If a pedestrian encounters a vehicle on Domsey Chase, they are likely to need to step off the road onto the grass verges; this is not welcomed, and the public is not wanted on the grass verges.
- 5.18.24 The bridge over the railway has a blind summit on its crest with no forward visibility; it is unsuitable for pedestrians to use as they will not see oncoming vehicles or be seen by them; there is a risk of accidents occurring at the bridge if the footpath is diverted.
- 5.18.25 The only water supply to the cottages on Domsey Chase is from the well located at No. 6; the pumphouse for the well is located at No. 5. Wastewater from the septic tanks in the cottages on the eastern side of Domsey Chase discharges under the road and into a ditch on the western side. If works need to be undertaken to the feed pipe between the pumphouse and Nos 1 – 4 or to the discharge pipes, such works currently go ahead with advance notice being given to the occupiers of the cottages and Domsey Farm; the farm and its various businesses have an alternative means of access from Elm Lane.
- 5.18.26 If a PROW ran over Domsey Chase, then additional consultation and expense would result as a temporary closure of the footpath would be required. This would be unnecessary if crossing E22 remained open or if the footpath was diverted along Little Tey Road and New Lane to the A12.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.18.27 The proposed creation of an additional footpath would have an adverse impact upon Mr & Mrs Cock's landholding which may impact upon the

productivity of the arable field. Ms Partridge is identified in the book of reference as being a tenant or occupier of plot 27 over which it is proposed to create a new public footpath. The creation of the new footpath does not directly affect Ms Partridge's property although it may impact upon her rights of access over this part of Domsey Chase.

- 5.18.28 One of the principal grounds of objection was that pedestrians using the new footpath might need to step off Domsey Chase and onto the grass verge which Ms Partridge contends is her private property. Domsey Chase is a narrow access road with insufficient width for two vehicles to pass each other without one pulling over and pausing whilst the other goes past; Ms Partridge does not want pedestrians encroaching upon her grass verges when stepping off the road to allow a vehicle to pass.
- 5.18.29 There appears to be little public use of FP EX/78/3 and the likelihood is that few, if any, members of the public are likely to be found walking along Domsey Chase in the future if E22 were to be closed and the footpath diverted. However, it may be the case that those pedestrians who may use the proposed route may need to step off the road and onto the adjacent verge as necessity requires.
- 5.18.30 Although the creation of a new footpath may impact upon the agricultural capacity and productivity of the field crossed by the new path and may result in encroachment onto the grass verges of Domsey Chase from time to time, these do not appear to be impacts which could not be dealt with through detailed design and the relevant compensation provisions.
- 5.18.31 The creation of a public footpath over Domsey Chase is unlikely to have a significant adverse impact upon the ability of the occupants of Domsey Cottages to access their properties or for those businesses located at Great Domsey Farm to access their premises. It is not uncommon for a private access road to also be subject to a PROW; the character and condition of Domsey Chase does not suggest that a PROW would be incompatible with its current use as a private means of access to property.
- 5.18.32 It is recognised that the diversion of the footpath onto Domsey Chase would impose an additional burden upon the residents of Domsey Cottages if it was necessary for works to be undertaken to the services buried in the road which would obstruct passage along it, as the consent of the Highway Authority to a temporary closure of the PROW would be required before work could commence. Any additional financial burden this would place upon the owners and occupiers of the cottages may be quantified and addressed under the compensation provisions.

#### **SOM4(b) Impacts on other users**

- 5.18.33 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.



#### **SOM4(c) Impact on flood risk**

- 5.18.34 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.18.35 There former crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.18.36 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass from the residual part of footpath EXD/78/3, there will be no impact upon the landscape arising from the closure of E22.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.18.37 No representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.18.38 The proposed alternative route would be an unsurfaced grass footpath of a similar character to that part of FP EX/78/3 north of the railway which is unaffected by the closure of E22.
- 5.18.39 Users will be required to undertake an additional 450m of walking as a result of the closure of E22; however, to reach the crossing, users are likely to have travelled some distance along the public rights of way network and local road network and would require a journey of some distance to arrive at any of the public rights of way to the east, south or west of the current terminal points of FP EX/78/3. The increase in journey time and distance which would arise from the proposed diversion is unlikely to inconvenience those who may wish to use E22.
- 5.18.40 It is contended that the use of Domsey Chase would put pedestrians at risk from collision with vehicles turning into the road from the A12 and that if vehicles turning left had to brake suddenly when turning because of a pedestrian this could lead to vehicular accidents on the A12 as there was no deceleration lane or slip road. However, vehicles which were attempting to turn left into Domsey Chase from the A12 are likely to have given advance warning to other road users of the intention to do so and will be decelerating to make that turn. There is a verge and splay at the southern end of Domsey Chase onto which pedestrians can step to avoid cars exiting from the A12 and the splay is sufficient for any pedestrian to be able to observe vehicles attempting such a manoeuvre. The characteristics of the

junction of Domsey Chase and the A12 are such that pedestrians and vehicular users would not be put at significant risk of harm by the diversion of the footpath.

- 5.18.41 There is restricted visibility at the Domsey Chase overbridge. However, vehicles travelling to and from Great Domsey Farm will be travelling at a speed appropriate for such conditions and pedestrians using the overbridge are unlikely to be subject to significant risk. There is a verge on the western side of the bridge onto which pedestrians could step if their use of the bridge were to coincide with that of a vehicle.
- 5.18.42 The Equality and Diversity Overview report rating for E22 was green and no DIA was carried out. The increased distance a user would have to travel from the northern side of E22 to reach the current terminal point of FP EX/78/3 might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary, the steps down to the crossing and the isolated, rural location of the crossing, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.
- 5.18.43 The proposed alternative route maintains the north-south connectivity of the rights of way network over the railway albeit approximately 170m further to the east; the proposed alternative route utilising the overbridge at Domsey Chase will therefore serve as a suitable and convenient alternative means of crossing the railway for those few who would wish to use E22.

### **Overall conclusion**

- 5.18.44 Considering all the above, and all other matters raised in relation to E22, I conclude that the Secretary of State should include E22 within the order as the proposed alternative would provide those existing users of the crossing with a suitable and convenient alternative route.

## 5.19 **E23 Long Green**

### **Description of the Crossing**

- 5.19.1 This former footpath crossing was located on the Liverpool Street to Norwich railway immediately to the south-east of the junction of Long Green, Jays Lane and Dobbies Lane on the south-eastern edge of the village of Long Green.
- 5.19.2 The land to the south-east of the crossing and to the west of the A12 is partly developed with some residential use mixed with agricultural and horticultural use. To the north-west of the railway the land is occupied by residential housing with the nearest properties being approximately 30m from the railway.
- 5.19.3 Long Green was a footpath level crossing with wicket gates and miniature stop lights. The crossing was closed in 2016 by means of a Rail Crossing Extinguishment Order made under s118A of the 1980 Act. A footbridge with ramps and steps has been constructed adjacent to the former crossing.

### **Description of the Proposal**

- 5.19.4 It is proposed to dedicate a PROW over the fully accessible footbridge which has been constructed.

### **The Case for Network Rail**

- 5.19.5 Long Green footpath level crossing was legally closed in 2016 with the construction of an accessible footbridge at the site of the level crossing. The bridge was opened in 2014. The proposal would confer powers to create a PROW over the fully accessible footbridge to serve as the replacement for the footpath extinguished in 2016. Network Rail considers that the proposed route over the new footbridge is suitable and convenient when considered in the context of the purpose and characteristics of the former footpath crossing.

### **Objections and Representations**

- 5.19.6 There were no objections or representations made to the proposal.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.19.7 The proposal has no impact upon adjacent landowners, local businesses, utility providers and statutory undertakers and there would be no adverse impact upon those parties' undertakings. The accessible bridge has been constructed within NR's own landholding. Members of the public who may

have wished to cross the railway at this point could do so via the ramped access or the steps of the bridge.

**SOM4(b) Impacts on other users**

5.19.8 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

5.19.9 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.19.10 The former crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.19.11 The bridge is located wholly within NR land and has been present and available for use since 2014. The proposed dedication of a PROW over the bridge has no impact in these respects.

**SOM4(g) Any other environmental impacts including noise and health**

5.19.12 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.19.13 The pedestrian crossing at Long Green was closed in 2016. The bridge has been constructed with ramps at a gradient of not more than 1:20 to provide a means of crossing the railway which is accessible to all persons.

5.19.14 The Equality and Diversity Overview report rating was green and no DIA was carried out. Any disproportionate impacts resulting from the closure of Long Green crossing are mitigated by the installation of a fully accessible footbridge. The footbridge is, and has been, in use since 2014. The Secretary of State can be satisfied that the PSED will be met in respect of the proposals for E23.

5.19.15 Taking all these matters into account, I consider that the ramped access footbridge will provide a suitable and convenient alternative route for those persons who would have used E23 prior to its closure.

## **Overall Conclusions**

- 5.19.16 Considering all the above, and all other matters raised in relation to E23 Long Green, I conclude that the Secretary of State should include E23 within the Order as the bridge provides the public with a suitable and convenient alternative route to that extinguished in 2016.

## 5.20 **E25 Church 2**

### **Description of the crossing**

- 5.20.1 Church 2 crossing carries FP EX/149/29 over the Liverpool Street to Norwich railway. To the south lies the village of Copford, with Marks Tey to the west, Gallows Green to the north and Colchester to the east. To the north of the crossing the land is mainly arable farmland, to the south is a belt of woodland, the A12 and an area of mixed land use comprising housing and agricultural land.
- 5.20.2 The crossing is approached from the north via FP EX/132/11 which follows the edge of fields and agricultural access tracks between fields. The approach to the crossing is via a steep flight of steps up the railway embankment with a corresponding flight of steps on the south of the railway which carries the footpath down the embankment and into the belt of trees which stand between the railway and the A12.
- 5.20.3 Footpath EX/149/29 continues over the A12 to link with FP EX/128/1 which then runs south to terminate on London Road in Stanway. Although FP EX/149/29 is shown in the Definitive Map as running over the A12, there is no trace of this footpath between the railway at the A12, no trace of the footpath on the road and no means of crossing the 6-lane carriageway at this point. There is also no evidence on the southern embankment of the A12 of a means of access to and from the road and FP EX/128/1. Whereas the footpath may not have been extinguished when the A12 was constructed, Church 2 crossing and the rights of way network to the north of the railway has been severed from the network to the south by the A12. If E25 and the footpath over the A12 were open and available, they would provide a link between Copford and Gallows Green.
- 5.20.4 Church 2 crossing is currently temporarily closed on safety grounds as the steps leading to and from the crossing are in a poor state of repair<sup>140</sup>. When open for public use, E25 is a passive level crossing where users are required to stop, look and listen for approaching trains before crossing the rails. The line speed at this crossing point is 100 mph and sighting distances are compliant with industry standards in all directions. As the crossing is temporarily closed, a census of use was not carried out; the experience of the level crossing managers is that there is little or no use of this crossing. As the crossing is temporarily closed, the ALCRM score is M13.

### **Description of the proposal**

- 5.20.5 Those path users wishing to travel between Gallows Green and Copford are most likely to use FP EX/132/233 and the underbridge on Turkey Cock Lane. From Turkey Cock Lane an unsurfaced footpath at the foot of the A12 embankment provides access to FP EX/128/1 from which pedestrians can travel into Copford.

---

<sup>140</sup> 'rotten and dangerous' Mr Fisk's evidence at NR31/1 page 104

- 5.20.6 The proposal is to close the E25 crossing, extinguishing the PROW over it. In addition, it is proposed to extinguish that part of FP EX/149/29 which crosses the A12 and to extinguish that part of FP EX/132/11 to the north of the crossing to avoid the creation of culs-de-sac either side of the crossing.
- 5.20.7 Those who would wish to cross the railway and the A12 would be diverted along FP EX/132/23 to Turkey Cock Lane. Users would be required to walk along Turkey Cock Lane until the underbridge before turning west along an unsurfaced path to a junction with FP EX/128/1. The crossing infrastructure at E25 would be removed and the boundary fence of the railway would be secured to prevent trespass onto the railway.
- 5.20.8 The total additional length a user will be required to walk is approximately 530m to travel from the junction of FPs EX/132/11 and EX/132/23 north of the railway to the junction with FP EX/128/21 to the south of the A12. North-south access over the railway will be maintained via the underbridge on Turkey Cock Lane.

### **The Case for Network Rail**

- 5.20.9 Network Rail seeks to formalise the alternative route already being used by the public as a means of travelling north-south avoiding the A12. A new PROW would be created over where only a permissive footpath exists, despite that route being signposted as part of the alternative route by the Highway Authority.
- 5.20.10 The initial proposal was to extinguish the PROW over the crossing without providing a replacement route. However, it became apparent from discussions with the Highway Authority that this approach would not be supported. It is understood that the Highway Authority has no objection to the proposal.
- 5.20.11 Accessing the crossing involves walking up steps on both sides and traversing areas of dense woodland. The crossing is therefore unsuitable for wheelchair or pushchair users and may present some challenges to any users with mobility difficulties. Following a scoping study, a DIA was not considered necessary at this crossing as the route is severed by the A12 and there is potential for improved accessibility.
- 5.20.12 An alternative was considered that did not have the proposed footpath link south of the railway and would divert users along London Road and Turkey Cock Lane south of the railway<sup>141</sup>. This was not taken forward as it was considered the final design offered less road walking and utilised the existing permissive footpath link.
- 5.20.13 The proposed route utilises the currently signposted route for uses to cross the railway and the A12 and it is recognised by ECC that FP EX/149/29 does not exist on site. It is considered that the proposal will formalise the current use of the available network.

---

<sup>141</sup> NR32/2 tab 2 page 139

- 5.20.14 The diversion route is considered to have available verges of the kind found alongside rural roads. There are no records of pedestrian casualties occurring on Turkey Cock Lane between 1999 and 2016. A Stage 1 RSA was carried out on Turkey Cock Lane; no issues were identified following the audit.
- 5.20.15 ATC data<sup>142</sup> was collected on Turkey Cock Lane south of the underbridge, which showed an average 2-way daily traffic flow of 1,147 vehicles at an 85<sup>th</sup> percentile speed of vehicles of 39.2mph where the posted speed limit is 60mph. The proposal to route pedestrians along this section of Turkey Cock Lane was considered appropriate in the light of the traffic count data.
- 5.20.16 Following consideration of the use of the existing route over the railway and an assessment of the proposed alternative in terms of impacts on the environment, users and other impacted parties, Network Rail maintains that the Secretary of State can properly be satisfied that the proposed route would provide a suitable and convenient replacement for existing users of the crossing.

### **Objections and Representations**

- 5.20.17 There were no objections or representations made to the proposal.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.20.18 In terms of landowners, tenants and occupiers of the land affected by the proposals, there would be a positive benefit to those parties whose land is crossed by that part of FP EX/132/11 which is proposed to be extinguished. The proposal will not prevent any party from accessing their property or have any adverse impact upon local businesses.

#### **SOM4(b) Impacts on other users**

- 5.20.19 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.20.20 There is no indication that the proposal would have any impact on flood risk.

---

<sup>142</sup> NR32/2 tab 1 page 39



**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.20.21 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.20.22 It is unlikely that the proposal would have any adverse impact upon agricultural land; the proposed alternative route leading south-west from Turkey Cock Lane already physically exists and is signposted by the Highway Authority as the access to FP EX/128/1<sup>143</sup>. It is likely that this alternative route was created as part of the construction of the A12.
- 5.20.23 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E25.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.20.24 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.20.25 No data was gathered regarding actual use or potential use by the public of E25; it seems that use, if any, would be extremely limited as the continuation path from the railway through woodland and over the supporting embankments of the A12 does not exist and no provision has been made for pedestrians to cross the central crash barrier. The evidence points to the proposed alternative route being used by those pedestrians who wish to travel from FP EX/132/23 to Copford (and vice versa). The additional journey time and distance is therefore unlikely to inconvenience users or potential users of the crossing.
- 5.20.26 The proposed alternative route would involve some road walking along Turkey Cock Lane between FP EX/132/23 and the A12 underbridge. The ATC data shows that traffic speeds are generally much lower than the posted speed limit and there are no records of accidents on this road involving pedestrians; the proposed alternative does not appear to be unsafe for pedestrians to use.
- 5.20.27 The Equality and Diversity Overview report rating for E25 was green and no DIA was carried out. The increased distance a user would have to travel from the junction of FPs EX/132/11 and EX/132/23 to reach the available part of FP EX/128/1 might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing,

---

<sup>143</sup> "track leading to footpath no. 1"

the stiles at the railway boundary, the steps down to the crossing and the unavailability of a means by which the A12 can be crossed, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

- 5.20.28 Taking all these matters into account, I consider that the proposed alternative route is suitable and convenient for those who would seek to use E25 if it were open and available.

### **Overall Conclusions**

- 5.20.29 Considering all the above, and all other matters raised in relation to E25 Church 2, I conclude that the Secretary of State should include E25 within the Order as the proposal would provide those who would wish to use the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.21 **E26 Barbara Close**

### **Description of the crossing**

- 5.21.1 Footpath EX/285/18 crosses the Shenfield to Southend Victoria railway line and provides a link between Lesney Gardens and FP EX/285/21 and the network of public rights of way which lie to the west of the railway. Residential properties border the railway to the east with some agricultural buildings being located immediately to the west of the crossing. The land to the west of the railway is predominantly agricultural land, although some residential development is being undertaken with further area of land to the west of the railway having been identified for residential development<sup>144</sup>.
- 5.21.2 E26 is approached from the east via an unsurfaced path which runs in an alleyway formed by the boundary fences of two adjacent residential properties. There is crossing decking furniture at the crossing itself to enable pedestrians to cross safely, however the approach to the crossing slopes on both sides of the railway due to the railway embankment, with kissing gates in the boundary fence set at the foot of these slopes. On the western side of the railway, FP EX/285/18 connects to FP EX/285/21 which is an unsurfaced field edge path which runs parallel to the railway between Rectory Road to the north of the crossing and Ironwell Lane to the south.
- 5.21.3 E26 has kissing gates<sup>145</sup> in the railway boundary fence and is a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 80mph. The ALCRM score for this crossing is C6. The 9-day survey camera census undertaken in July 2017 recorded 121 pedestrians using the crossing during the survey period, with greatest usage being on Sunday 10 July 2017 when 26 adults used the crossing<sup>146</sup>. Of the 121 users recorded by the census, 6 were accompanied children, one was an unaccompanied child and the remainder were adults. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposal**

- 5.21.4 It is proposed to close E26 to all users, extinguishing the public rights of way over FP EX/285/18 between FP EX/285/21 and Lesney Gardens.
- 5.21.5 Current users of E26 wishing to access E26 from the east would be required to travel south along the footways of Lesney Gardens and Roche Avenue to Ashingdon Road. Users would then travel along the footway of Ashingdon Road to Ironwell Lane. A discontinuous footway on the north and then south side of Ironwell Lane requires users to cross the lane at its junction with Ashingdon Road and then re-cross the lane to the east of Ironwell Court. There are dropped kerbs and tactile paving at the recognised crossing

---

<sup>144</sup> NR30/2 tab 6

<sup>145</sup> Installed in 2016 to replace earlier wicket gates – OBJ 148 W-023

<sup>146</sup> NR25 3267-LON-E26 page 5; see also NR 165 regarding the survey data

points. A recently constructed footway at the underbridge leads users to the southern end of FP EX/285/21. From here, users would travel north to reach the former junction of FP EX/285/21 with FP EX/285/18. The total additional journey distance to arrive at the western side of the railway would be 700m.

- 5.21.6 The infrastructure at the crossing would be removed and the railway boundary fence would be secured to prevent trespass with the entry to the alleyway between the houses on Lesney Close being locked and gated to prevent access between those houses to the secured railway boundary. Adjacent landowners on Lesney Gardens will retain their rights over the former PROW to access their property.

### **The Case for Network Rail**

- 5.21.7 Feedback from consultation on the proposal and analysis of the user census data suggested that the crossing was used by a moderate number of people primarily to provide recreational access to the wider footpath network to the west of the railway. It is acknowledged that a smaller number of people use the footpath on a daily basis as part of their route to work and for access to property to the west of the railway.
- 5.21.8 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility (notably the presence of narrow gates<sup>147</sup>, overgrown vegetation and a sloped approach), of the existing crossing route.
- 5.21.9 It is considered that the proposed route provides access for pedestrians wishing to travel east to west between residential development and services in Rochford and the footpath network to the west of the railway as does the original route. Depending on the origin and destination points, the route is slightly longer than existing and an additional 700m may add around 10 minutes to a walk. As the proposed alternative would facilitate a leisure walk for both existing and new residents of the village it is considered acceptable.
- 5.21.10 The proposed route was subject to a Stage 1 RSA; the Audit did not identify any potential safety problems with the proposal.
- 5.21.11 Network Rail acknowledges that the proposal is technically an extinguishment of public rights as opposed to a diversion as no new PROW is being created in lieu of the loss of the crossing<sup>148</sup>. However, Network Rail also acknowledges that this is a case where there needs to be a diversionary route – but considers that a suitable and convenient replacement is provided by the existing highway and PROW network, such that provision of an entirely new PROW is not required.

---

<sup>147</sup> Present at the time of the assessment, these gates have now been replaced with more accessible 'horseshoe' gates

<sup>148</sup> E26 is found in Part 2 of Schedule 2 to the Order

- 5.21.12 The original proposals had included the upgrading of the existing underpass at Ironwell Lane, by providing a formal footway on the northern side, but that proposal has been overtaken by events: a new tarmacked footway has already been provided by the developer of an adjacent housing scheme in this location<sup>149</sup>. The proposed alternative route was considered to be a suitable and convenient replacement for E26; the nearby residential development did not affect that conclusion.
- 5.21.13 To the south of Ironwell Lane there is a site which has been allocated (and now consented) for residential development<sup>150</sup>. In line with Network Rail's proactive approach to managing risks at level crossings the proposal to close this crossing now by way of diversion will address a potential increase in use of the crossing and an increase in risk at that crossing. However, it is not expected, from the location of the new development in relation to open spaces and facilities and services within the village, that E26 would be a key link for the new development.
- 5.21.14 NR maintains, therefore, that the Order may properly be confirmed in relation to E26 without substantive changes to what is proposed.

### **The case for the Objectors who did not appear at the inquiry**

#### **Paul Gyton (OBJ 016)**

- 5.21.15 The crossing is in the middle of a long straight stretch of track. Visibility both ways is excellent and using the crossing is completely safe. The proposed alternative route using existing footways is lengthy; why should the public be forced to take a lengthy detour if the current crossing is safe?

#### **S A Willis (OBJ 023)**

- 5.21.16 Walking to the newsagents and shops on Daly's Road from Golden Cross Road using FPs EX/285/21 and EX/285/18 avoids the traffic fumes found along Ashingdon Road. The closure of E26 would add more exposure to traffic in having to walk to Daly's Road from Ironwell Lane and the alternative route entails passing through Meadowbrook Farm where there are dogs on the loose. There is greater danger in crossing Ashingdon Road than there is in crossing the railway at E26. The gates at the crossing have recently been repaired and will be serviceable for many years to come.

#### **BNP Paribas on behalf of Royal Mail Group Limited (RMG) (OBJ 156)**

- 5.21.17 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.

---

<sup>149</sup> NR 139 shows the new footway constructed on Ironwell Lane

<sup>150</sup> OBJ 148 inquiry document 3

- 5.21.18 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.
- 5.21.19 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Ironwell Lane.

### **The Case for the Objector who appeared at the inquiry**

#### **The Ramblers (OBJ 148)<sup>151</sup>**

- 5.21.20 The alternative involves a 700m walk, which (depending on an individual's speed) can take 7–15 minutes on a footway alongside a busy road for 3 minutes. It then goes under a railway bridge, and then alongside the railway line.
- 5.21.21 The present proposal does not represent an improvement, so runs counter to the Highway Authority's ROWIP. The Ramblers submit that this crossing carries the sort of path used as much for everyday journeys rather as for recreational-type walking. The survey done by Network Rail in connection with these proposals in July 2016 bears this out, showing 93 instances of use during a week. The additional distance which would result from the proposal is likely to put some people off from walking the route, using cars instead.
- 5.21.22 There are clear lines of sight in both directions. Train delays cannot be attributed to this level crossing as there have been no incidents at the crossing in the last 5 years.
- 5.21.23 E26 currently experiences reasonable levels of use, by any account. Usage levels are not restricted to the weekends but vary throughout the week. Whilst there is no mention of it on the design freeze map, Network Rail now recognises that permission has been granted, and implemented, for a significant development of 600 houses and a local school to the south-west of the crossing. This south-westerly extension of Rochford, including the provision of local facilities, can only be expected to increase usage of the level crossing, as an important pedestrian access point for this growing local community.
- 5.21.24 In such circumstances, it cannot be justified for Network Rail to close this level crossing and extinguish the ROW over it. Similar to E10, this proposal is not a "diversion" but a straight extinguishment, which Network Rail seeks to justify simply on the basis of the generic, and far-removed, "strategic" benefits associated with level crossing closure. The entirety of the alternative route set out on the design freeze map is available for use today. The only proposed improvement to this route was the upgrading of

---

<sup>151</sup> OBJ 148 – W-023

the footway on Ironwell Lane, but this has now been delivered by the abovementioned development.

- 5.21.25 Furthermore, this was a crossing for which Network Rail's own case was particularly unclear. Ms Tilbrook stated that an "alternative route" was deemed required for this crossing due to the current levels of usage. She argued that because some improvements to existing highway had been proposed, she did not consider this to be an extinguishment. In contrast, Mr Kenning accepted during cross-examination that this was an extinguishment.
- 5.21.26 Ultimately, the reality is clear. From a PROW perspective, this is a straight extinguishment of legal rights with no genuine "alternative route" being provided. Those using the crossing must be deriving a benefit from doing so. If the Order is made, and this proposal is implemented, that benefit will simply be lost.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.21.27 The only landowners affected by this proposal appear to be Network Rail and the owners and occupiers of those properties on Lesney Gardens which abut FP EX/285/18. Access to property would not be diminished as a result of the proposal; it is highly likely that the adjacent property owners would experience less disturbance with the cessation of members of the public using the footpath to access the crossing.
- 5.21.28 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However, whilst Network Rail had proposed the creation of a footway on the north side of Ironwell Lane, that work has already been undertaken by a third party. The new footway does not appear to have prevented vehicular access along Ironwell Lane and the development is unlikely to have any adverse impact upon RMG's existing vehicular use of the lane.
- 5.21.29 The principal issue between Network Rail and the Ramblers appears to be the lack of provision of any new right of way as part of this proposal. The alternative route suggested by Network Rail comprises the footways of existing public highways or other parts of the existing public rights of way network such as Ironwell Lane (BOAT EX/285/11 and FP EX/285/21). There is no 'new' PROW being created. In this respect, the Ramblers are correct in that the proposal is an extinguishment of existing public rights and not a diversion.

- 5.21.30 E26 is found in the Order in part 2 of schedule 2<sup>152</sup> which is entitled '*Closure of level crossings not subject to opening of new highway*'. Network Rail's position is that in the case of E26 it has identified that the existing public highway network will provide an alternative right of way to E26 such that section 5(6)(b) of the 1992 Act is engaged; it is not therefore required to provide a 'new' right of way to serve as a diversionary route.
- 5.21.31 I concur with the Ramblers that the closure of E26 would amount to an extinguishment of public rights as the suggested alternative route is already subject to a public right to pass and re-pass on foot. Despite the seemingly contrary positions taken by Mr Kenning and Ms Tilbrook on this question, Network Rail did not, in closing, dispute that the closure of E26 was other than an extinguishment.
- 5.21.32 The loss of a part of the local public rights of way network and the element of choice that E26 provides to the public is of concern to the Ramblers. The proposed alternative route utilising existing public highways and public rights of way would provide an alternative means by which those wishing to travel east-west across the railway could do so by utilising the underbridge at Ironwell Lane. The question which remains is whether that suggested alternative would be suitable and convenient for current users of the crossing.

#### **SOM4(b) Impacts on other users**

- 5.21.33 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.21.34 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.21.35 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.21.36 Footpath EX/285/18 does not cross agricultural or forestry land; consequently, there would be no adverse impacts upon such land.
- 5.21.37 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the

---

<sup>152</sup> NR 190 at page 35



erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E25.

**SOM4(g) Any other environmental impacts including noise and health**

5.21.38 S A Willis objects to the proposal as closing the crossing would require walking north along Ashingdon Road amongst the fumes generated by vehicular traffic. However, the route described by the objector between Golden Cross Road and Daly's Lane via E26 is primarily alongside public carriageways with the exception of FP EX/285/21 between Rectory Lane and E26; users of such a route would therefore be accustomed to road traffic fumes as part of their journey.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.21.39 The available evidence suggests that E26 serves both a recreational and utilitarian function and is reasonably well used by the public. The proposed alternative route utilises the footways of Lesney Gardens, Roche Avenue and Ashingdon Road; there would be no requirement for users to cross any of the public roads in order to arrive at the eastern end of Ironwell Lane. Although Ashingdon Road is a main thoroughfare within Hawkwell, users would not come into contact with moving vehicles.

5.21.40 Although Ironwell Lane is recorded as a BOAT, between Ashingdon Road and the railway overbridge it has the appearance and physical characteristics of the normal highway network.

5.21.41 At Ironwell Lane, users would be required to cross from the footway on the north side of the lane to that on the south side in order to continue a journey separated from vehicular traffic. The footway along Ironwell Lane is discontinuous and users would be required to cross the lane just before Ironwell Close and cross the entrance to the Close itself to reach the footway installed underneath the railway overbridge. The alternative route therefore requires users to cross a carriageway three times to avoid vehicular traffic. However, at each of these crossing points there are dropped kerbs and tactile paving in place to alert all users to the crossing points and Ironwell Lane itself appears to be lightly trafficked. Users of the alternative route would not therefore be put at undue risk from vehicular traffic. Users are unlikely to find the alternative route inconvenient or unsuitable in terms of safety.

5.21.42 The additional distance that a user will be required to walk to undertake a journey from Lesney Gardens to the western end of FP EX/285/18 would be 700m along with a corresponding increase in journey times of between 7 and 10 minutes. For those who use the crossing to access the public rights of way network on the western side of the railway, this increase in journey distance and times is unlikely to cause an inconvenience given that a circular walk between Rochford and Hawkwell is likely to be several kilometres in length.

- 5.21.43 The crossing is clearly well used as identified by the camera survey. Although some people may use the crossing for utilitarian purposes the only direct evidence of such use is from S A Willis who uses the crossing as part of a circuitous route between Golden Cross Road and Daly's Road. The suggested alternative will still allow such a journey to be undertaken, albeit crossing under the railway at Ironwell Lane as opposed to at E26. The additional 250m which the objector would be required to walk to reach Daly's Road would not appear to be significant given that a journey via Rectory Road to the western end of the crossing is approximately 2.3Km.
- 5.21.44 For those users who are intent on making their way to the facilities and services found in Rochford, the route via the underbridge would maintain the east-west connectivity currently provided by E26. Those users who use E26 for utilitarian purposes would not be inconvenienced by the proposed alternative route.
- 5.21.45 Footpath EX/258/21 runs over relatively firm and even ground between E26 and Ironwell Lane. A wicket gate at Ironwell Lane is the only path furniture that users would have to negotiate; the current crossing has two horseshoe gates to negotiate and users also have to negotiate the slope of the railway embankment in both directions. The alternative route is relatively flat throughout and more accessible than the existing crossing.
- 5.21.46 E26 is currently well used and some users may be exercising a choice of how to cross the railway. The Ramblers suggest that it would be wrong to close the crossing when new housing development is likely to give rise to increased demand for use. Network Rail's view with regard to development adjacent to a level crossing is to oppose the development until the crossing is diverted as it does not want to increase risk on the railway. It is recognised that Rochford will grow as a settlement over the coming years and that closure of the crossing is a way of preventing an increase in risk that would result from increased use.
- 5.21.47 The Ramblers submit that choice for the pedestrian would be reduced were the crossing to close. As no new PROW is being created and the alternative route would follow existing public highways, it is clear that the closure of E26 and the extinguishment of FP EX/285/18 would reduce the choice of routes which could be taken by the public. However, in terms of length, safety, design and accessibility, the proposed alternative is a suitable and convenient alternative means by which current users can cross the railway.
- 5.21.48 The Equality and Diversity Overview report rating for E26 was green and no DIA was carried out. The increased distance a user would have to travel from Roche Avenue to reach the western side of the railway might be an issue for some people. However, the alternative route would reduce the number of gates which users would have to negotiate and would remove the requirement to negotiate the slopes present at the railway embankments which form part of the existing crossing access.
- 5.21.49 Taking into account the physical condition of the existing approaches to the crossing, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the

proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.21.50 Taking all these matters into account, I consider that the proposed alternative route is suitable and convenient for those who currently use E26.

### **Overall Conclusion**

5.21.51 Considering all the above, and all other matters raised in relation to E26 Barbara Close, I conclude that the Secretary of State should include E26 within the Order as the proposal would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.22 **E28 Whipps Farmers**

### **Description of the crossing**

- 5.22.1 Footpath EX/272/178 crosses the London to Southend and Shoeburyness railway and connects with Havering FP 179 to form a north-south footpath running from Church Lane to St Marys Lane. There is a small trading park approximately 150m to the north-west of the crossing.
- 5.22.2 E28 is approached from the north and south via unsurfaced paths which run at the edges of fields. There is crossing decking furniture at the crossing itself to enable pedestrians to cross safely and there are wicket gates in the railway boundary fence. The north-south footpath which incorporates the crossing does not connect to any other public rights of way other than at Church Lane; access to other public rights of way in the area is via the ordinary road network.
- 5.22.3 E28 is a passive level crossing which requires users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 75mph. The ALCRM score for this crossing is C8. A 9-day census of use carried out in July 2017 did not record any use of this crossing<sup>153</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.
- 5.22.4 Adjacent to the pedestrian crossing is a private vehicular crossing which provides access from the north to a field immediately to the south of the railway and which is otherwise landlocked from the remainder of the landowner's property.

### **Description of the proposal**

- 5.22.5 It is proposed to close E28 to all users and to extinguish the PROW over the crossing. It is also proposed to extinguish the whole of FP 179 and that part of FP EX/272/178 between the crossing and the north-eastern corner of the trading park. The private vehicular crossing would also be extinguished.
- 5.22.6 On reaching the trading park, users travelling south from Church Lane would be diverted west over a new 2m wide unsurfaced path on the field boundary, approximately 270m in length, to Warley Street (B186). Users will then cross the B186 via a new pedestrian crossing point<sup>154</sup> where they will be diverted south via a new 2m wide unsurfaced footpath along the field boundary, approximately 195m in length, towards the railway. Users will then continue west, parallel to the railway along a new 2m wide unsurfaced footpath along field boundary, approximately 245m in length, to existing BR EX/272/183 at the M25 overbridge.

---

<sup>153</sup> NR25 2367-LON-E28 page 6

<sup>154</sup> This will not be a formal crossing point with pedestrian controlled lights, but the suggested point to cross the road will be marked in some way on the ground

- 5.22.7 Users would also be able to cross the railway at Puddle Dock crossing to link to FP 177. Puddle Dock crossing is located approximately 250m west of Whipps Farmers level crossing.
- 5.22.8 Those users approaching E28 from the south will travel along St Marys Lane using the available highway verge and footway to access FP 177 and Puddle Dock level crossing.
- 5.22.9 A 3.5m wide crushed concrete access track will be created to provide access from St Marys Lane to the field immediately south of the railway which is currently served by the private vehicular access over E28. The creation of this new access will enable the existing private vehicular rights over the crossing to be extinguished.

### **The Case for Network Rail**

- 5.22.10 The closure of both the public and private crossings at E28 and the retention of Puddle Dock some 250m to the west will improve resilience on the railway network by reducing three crossings in close proximity to just one crossing.
- 5.22.11 The footpaths in the area are rural routes, considered to be used for recreational walking purposes. The length of the diversion varies for users, depending on origin and destination. It is noted that users undertake a recreation walk of over 2,000m in using the existing footpaths north and south of the E28 level crossing at present. To continue south from St Marys Lane a recreational walker using public rights of way south of FP 194 would have a walk of approximately 2,600m (on public rights of way only) to reach Fen Lane.
- 5.22.12 Reference has been made by users of the footpath network to north/south connectivity. From an inspection of the Havering public rights of way plans it can be seen that the existing north/south connectivity is currently provided by FP 194 just south of Warley Street at the junction with St Marys Lane which is approximately 575m south-south-west of E28. Users wishing to connect with FP 194 from FP 179 currently have to walk along that part of St Marys Lane being suggested as part of the alternative route.
- 5.22.13 To reach FP 194 via the diversion route would introduce an additional walking distance of approximately 520m mainly on field edge paths but also utilising the footway on the south side of St Marys Lane.
- 5.22.14 Users of FP 178 would experience the following, additional, changes to the distance of their journeys as a result of the proposed diversion: (a) to reach the southern end of FP 179 south of the level crossing at St Marys Lane (for onward travel east) journey distance would be increased by approximately 1,800m; (b) to reach Puddle Dock level crossing the walking distance would be reduced by approximately 1,500m; (c) to reach FP 177 south of the Puddle Dock level crossing at St Marys Lane the walking distance would be reduced by approximately 400m.

- 5.22.15 The user survey and the public consultation responses suggest that E28 is infrequently used by those walking for recreational purposes. It is acknowledged that a north-south journey would be increased by approximately 520m but that the desired north-south connectivity would be retained. In the context of recreational walking, the increased distance and time for some journeys is considered acceptable.
- 5.22.16 It is not considered that diverting users from E28 to Puddle Dock (ALCRM score C10) will increase the risk at Puddle Dock such that any intervention would be required.
- 5.22.17 Several alternatives were considered as the proposal was developed which involved the closure of Puddle Dock crossing and diverting pedestrians to the overbridge on Warley Street. The use of Warley Street overbridge was discounted due to the absence of a footway adjacent to the bridge, the reduced forward visibility over the crest of the bridge, high vehicle speeds and high volumes of traffic.
- 5.22.18 The proposal route was subject to a Stage 1 RSA. The RSA identified that pedestrians would be required to walk along a section of St Marys Lane where no footway or notable verge is present which would result in pedestrians walking in the carriageway. A high volume of traffic was observed on St Marys Lane travelling at high speeds and visibility is restricted by the highway geometry. The RSA suggested that a new footway should be provided<sup>155</sup>.
- 5.22.19 Network Rail concluded that as St Marys Lane between FPs 179 and 194 would currently be used by the public, the proposal would not exacerbate this, having regard to the low levels of usage. From publicly available accident data it was noted that there were no pedestrian casualties on St Marys Lane in the period 1999-2016. The maintenance of the verges for road walking is the responsibility of the local authority. It is understood that the Highway Authorities do not object to this proposal<sup>156</sup>.
- 5.22.20 ATC data was collected on B186 Warley Street between the road bridge over the railway and Upminster Trading Park<sup>157</sup>. This showed an average 2-way daily traffic flow of 13,737 vehicles and an 85<sup>th</sup> percentile speed of 48.8mph (southbound) and 45mph (northbound) where the posted speed limit is 60mph.
- 5.22.21 The associated safe stopping distance for such speeds is less than 160m. The proposed crossing point on Warley Street will be located over 200m away from any obstructions to driver sightlines south of the road crossing point and will enable drivers to see users in time to brake in the event of misuse of the crossing point. The sighting distances for drivers heading south is greater than 200m. The proposal is considered to be appropriate given the ATC data generated at this site.

---

<sup>155</sup> NR16

<sup>156</sup> Essex County Council and the London Borough of Havering

<sup>157</sup> NR32/2 tab 1 page 6

- 5.22.22 Following a scoping study, a DIA was not considered necessary at this crossing due to the low usage of the level crossing.
- 5.22.23 There were three main issues raised by objectors to the proposed closure of the public rights of way at this crossing: i. the length of the diversion; ii. road safety concerns; iii. impact on private land.
- 5.22.24 First, with regard to length. It was explained in evidence how the E28 crossing fits within the network, and how people would currently access it. It is clear – and this appeared to be common ground with the Ramblers – that it would be used as part of longer walks on those public rights of way south of St Marys Lane. In the context of those wider walks, and, given the purpose for which E28 is currently used, the additional distance which the diversion would add is not such that it would not be a suitable and convenient replacement for existing users. In some cases, the diversion would reduce journey times.
- 5.22.25 Secondly, road safety. Understanding how the route is used today also provides context for the road safety concerns which have been raised. The onward PROW connections in this area are, essentially to the north and south. E28 is some distance from E29 and the PROW network to the east. Whilst there is a scattering of properties to the east, it is unlikely that people are currently approaching E28 from the east or would be wanting to head east if the crossing is closed.
- 5.22.26 In reality, anyone wishing to access E28 from the PROW network to the south, or to continue a journey having traversed E28 from the north, has to walk along St Marys Lane. It is part of the route that existing users are undertaking. It is against that background that the conclusion that the provision of a new footway on St Marys Lane was not required (despite the recommendation in the RSA) must be considered.
- 5.22.27 Contrary to the submission of the Ramblers, Network Rail are not saying that nothing needs to be done because no one would really be using that section of St Marys Lane.
- 5.22.28 Rather, Network Rail's position, in brief, is that: (a) as that section of St Marys Lane has to be used today by existing users of E28 in order to either reach the level crossing from FP 194 or to continue an onward journey south, it can logically be said that use of that section of St Marys Lane must be suitable and convenient for existing users of E28 if the level crossing is shut; and (b) given (i) the proposed diversion route would take users over the railway at Puddle Dock to the west; (ii) the lack of onward connections to the PROW network to the east; and (iii) the very small number of properties to the east of FP 179, the acquisition of rights over private land to create a new footway along St Marys Lane could not be justified.
- 5.22.29 Similarly, the suggestion by the Ramblers that a new crossing point should be provided where FP 177 meets St Marys Lane must also be considered in the context of how that route is used today. It was common ground that anyone wishing to access FP 177 from the PROW network to the south, or to reach that ongoing network having travelled across Puddle Dock level

crossing currently has to cross St Marys Lane. There is no formal crossing point at this location. The Highway Authority has not raised any suggestion that a more formalised crossing point is required than is provided for today. No issues were raised with crossing St Marys Lane to access FP 177 in the RSA.

- 5.22.30 Network Rail maintains that there is no need for a new crossing point in this location, and that the Secretary of State may properly conclude that the proposed diversion route is suitable and convenient for existing users without it.
- 5.22.31 An issue was also raised about the proposed crossing point on Warley Street to the north of the railway. There were, however, no concerns about visibility at this location given the 85<sup>th</sup> percentile speed of vehicles approaching the bridge. Any encroaching vegetation which might impair visibility would also be an issue for the Trading Park. No technical evidence was put forward to demonstrate that forward visibility was not possible at this location.
- 5.22.32 A further concern raised by the Ramblers was that walkers would not use the proposed diversion route but would instead take a short cut on Warley Street. Given the emphasis placed by the Ramblers as to the undesirability of on-road walking routes replacing off-road paths, it is perhaps surprising that they are suggesting that walkers would choose to use Warley Street in preference for the field edge PROWs being created. As the routes in this location are used for leisure walking, NR maintains there is no obvious impetus for walkers to select the 'short cut' as opposed to the slightly longer, field-edge footpaths being created.
- 5.22.33 Similarly, there is no merit in the suggestion that a walker reaching St Marys Lane from the south would 'see' the route along Warley Street whereas they would not 'see' the diversion route (i.e. FP 177), or it would be a 'more attractive route'. As Mr Russell had to agree in cross-examination, that same issue currently exists for users reaching St Marys Lane from FP 194 – they can 'see' Warley Street directly ahead of them, but not FP 179 which is around the bend to the east. This matter is simply a non-issue.
- 5.22.34 Finally, the impact on private land: The landowner to the west of Warley Street, (OBJ 155) objects to the closure of the crossing, primarily due to the impact of the new PROW on his land. It was Mr Padfield's position that: (i) he objected to the closure of E28 because the diversion route was not suitable; (ii) if E28 was closed, he objected to the western extension of the new footpath to the west of Puddle Dock which he did not consider was required; and (iii) if E28 was closed, he had proposed an alternative route which should be taken forward instead.
- 5.22.35 By letter dated 29 January 2019, Mr Padfield's agents confirmed that points (ii) and (iii) were no longer being pursued, and that the objection was maintained only on point (i). Network Rail's witnesses have explained, in evidence, why the proposed new PROWs are considered to be required, suitable and convenient.



- 5.22.36 As regards the extension of the new footpath westward to the M25 beyond Puddle Dock, that link had initially been proposed when a holistic solution was being considered for closure of both E28 and Puddle Dock. However, the additional section of footpath reflected an existing desire line to the west of FP EX/272/180 which was understandable as most of the routes in the area ran north- south. It is likely that users already travel along the proposed route to the underpass of the M25 rather than heading north along FP EX/272/180, west along FP EX/272/179, and then south again to the underpass along FP EX/272/183.
- 5.22.37 Network Rail maintains that it has struck the balance correctly between the needs of existing users of the level crossing and the interests of affected landowners in respect of its proposals for E28. The Order may properly be confirmed in respect of E28 without modification.

### **The Case for the Objectors**

#### **The Ramblers (OBJ 148)<sup>158</sup>**

- 5.22.38 Mr Bird's evidence is that FP EX/272/178 provides an important link in the local rights of way network connecting Great Warley Hall to the north of the railway with the network to the south of it. From the southern end of FP 179 users can travel east or west along St Marys Lane to access footpaths to West Horndon or Bulphan. The proposal would create a convoluted westward circular diversion which would include over 1Km of roadside walking.
- 5.22.39 The proposed alternative route will add about an hour to a journey between St Marys Lane and Great Warley Hall; a there and back walk would add about 2 hours of extra walking time.
- 5.22.40 The proposed route would not improve provision for walkers; the proposal would take walkers away from a rural setting and place them onto a more difficult, noisy, unattractive route which increases the risk of accidents involving pedestrians and vehicles.
- 5.22.41 Warley Street is a heavily used road with vehicles travelling at speed in both directions; there is regularly a continuous stream of cars making the road difficult to cross. The proposed crossing point is less than 200m from a hump-backed bridge. The posted speed limit over the bridge is 60 mph. The risk to pedestrians is likely to be greater than that faced at E28.
- 5.22.42 It is considered that pedestrians directed along St Marys Lane from FP 179 are likely to walk along Warley Street and the hump-backed bridge rather than follow the suggested diversion, as Warley Street is shorter and more direct than the proposed diversion. There is a very narrow kerb on the overbridge; pedestrians would need to cross this bridge in the carriageway. This would result in a high risk of collision between pedestrians and motorists. Pedestrians would therefore put themselves at risk for the

---

<sup>158</sup> OBJ 148 W-006 Mr Bird

reasons stated in Network Rail's RSA<sup>159</sup>. Although Network Rail consider that driver sightlines and stopping distances are satisfactory, no research appears to have been conducted regarding sightlines for pedestrians who are at the greatest risk. The RSA provides no information on traffic volumes or speeds on any part of St Marys Lane.

- 5.22.43 St Marys Lane is also a heavily used road with fast moving traffic. The proposed diversion alongside it includes a narrow uncut grass verge. Mr Bird considers that the proximity of fast noisy traffic is not only extremely unpleasant but also intimidating; and it increases the risk of accidents between pedestrians and vehicles. Both Warley Street and St Marys Lane lack footways and the proposed diversion, therefore, requires walkers to use verges. When the verges are overgrown walkers will be tempted to use the carriageway, increasing the risk of collision with a vehicle.
- 5.22.44 St. Marys Lane is a rural single carriageway subject to the national speed limit (which is 60mph at this point). It has grass verges on both sides of varying widths from 1.3m down to 0.3m. The verges are poorly maintained with adjacent hedgerows regularly overgrowing the verge.
- 5.22.45 There is a footway on the northern side of approximately 130m length which provides a safe facility for pedestrians. For the remaining distance (a walk time of 7-8 minutes) pedestrians are required to walk intermittently either on poorly maintained verges or within the carriageway. If this section of the diversion is to be used, then a programme of verge clearance and annual maintenance will be required to achieve an uninterrupted safe width of verge for pedestrians to use.
- 5.22.46 The proposed diversion route along the B187 follows an existing narrow, but adequate, footway on the southern side of the road. When it reaches FP 177 pedestrians are required to cross the B187. The crossing point is located less than 50m from the B186/B187 mini-roundabout junction to the west at the point where westbound traffic is slowing down to negotiate the roundabout and eastbound traffic has just exited the roundabout and is accelerating. The crossing point is directly by the vehicular access to a commercial estate to the north of the B187. A central refuge island should be provided at this point to assist pedestrians in safely crossing the B187.
- 5.22.47 Network Rail's proposals divert users along St Marys Lane. Both the Ramblers and the RSA auditing team raised concerns with roadside walking here due to intermittent and insufficient verge. This would be an intimidating experience for pedestrian users, particularly those who may be less able to hear oncoming vehicles.
- 5.22.48 Whilst this issue could easily be addressed by the provision of a footway or through guaranteed verge clearance and maintenance, it seems Network Rail does not think that would be justified because, in reality, users will not need to use this part of Network Rail's proposed diversion because Puddle Dock level crossing, to the east of E28, will remain open. Notwithstanding

---

<sup>159</sup> NR16 Essex Stage 1 Road Safety Report 367516/RPT021 p11-13

that this position completely contradicts the documentary evidence underlying this proposal which clearly routes users to use this section of St Marys Lane. The RSAs had not re-assessed the route with Puddle Dock remaining open.

- 5.22.49 Network Rail's proposals also require users to cross Warley Street to the north of the railway. There is insufficient detail on the proposals for this crossing point to assess its safety for pedestrians and, in particular, whether pedestrians will have sufficient visibility of the road and approaching vehicles on a busy 60mph road<sup>160</sup>. Mr Bird, on behalf of the Ramblers, provided a user perspective, noting that he found this to be an extremely busy road and crossing can be quite a daunting experience.
- 5.22.50 Overall, due to the significant length of this diversion and all of the safety concerns referred to above, the Ramblers maintain their objection to the closure of E28.

### **S & J Padfield and Partners (OBJ 155)**

- 5.22.51 S & J Padfield and Partners have no connection with the land crossed by the right of way which runs over crossing E28, but own land crossed by the proposed alternative footpath. Currently there is no PROW over this route and creating it would take productive agricultural land out of production and impact upon the ability to use the fields.
- 5.22.52 Network Rail seek to connect users of FP EX/252/178 to the Puddle Dock crossing which is to be retained; an alternative route is suggested over land to the east of Warley Road to provide a connection to FP EX/272/180<sup>161</sup>. This would provide access to Puddle Dock and satisfy Network Rail's aims whilst having less impact upon the land.
- 5.22.53 No explanation or justification has been given for the creation of a further section of footpath north of the railway between Puddle Dock and the M25 overbridge.
- 5.22.54 S & J Padfield withdrew their suggested alternative route by letter dated 28 January 2019 but maintained their objection to the closure of E28 as the alternative promoted by Network Rail was not suitable.

### **E G White & Sons (OBJ 204)<sup>162</sup>**

- 5.22.55 Security is an issue. If a gate were to be erected, this would be broken, and unauthorised access would be gained to the land; no specification for any such gate has been set out. A 3.5m crushed concrete track would draw the attention of travellers to gain access to the land and to that of Mr Gemmill;

---

<sup>160</sup> OBJ 148 Inquiry document 20 – Technical Note 4 preferred distance between pedestrian and carriageway 2 metres; acceptable distance 1.5 metres

<sup>161</sup> OBJ 155 inquiry document 2 Blue route

<sup>162</sup> E G White & Sons did not appear at the inquiry, nor were they represented

specific objection is made to the loss of land to provide an access for Mr Gemmill.

- 5.22.56 There would be an increased risk of fly tipping in the area arising from the creation of a new access track. Thousands of pounds will have been spent on the 2017 upgrade of the public and private crossing point which will have been wasted if the private crossing is closed. Network Rail's strategy for reducing level crossing risk should not increase the burden on private landowners.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.22.57 The proposal would extinguish the private vehicular crossing at E28 with a new means of access to the affected landowner's property being provided from St Marys Lane over third party land; there will be no loss of access to property arising from the proposal. The impact of a more circuitous access to the land to the south of the railway will to some extent be offset by the extinguishment of the existing route from the crossing to the edge of the trading park.
- 5.22.58 The proposed vehicular access from St Marys Lane will run over third party land. The creation of a private vehicular access will have a negative impact upon that land, only partially offset by the extinguishment of the footpath between St Marys Road and E28. Concerns were raised regarding the security of gates to be erected and the loss of land to provide a new vehicular access from St Marys Lane.
- 5.22.59 The proposal will create new footpaths over land to the west of Warley Road. Objections have been made that these footpaths would have a detrimental impact upon agricultural productivity and yield from the field affected.
- 5.22.60 There do not appear to be impacts in this respect which could not be dealt with through detailed design and compensation.

#### **SOM4(b) Impacts on other users**

- 5.22.61 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.22.62 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.22.63 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.22.64 Footpath EX/272/178 and FP 179 cross arable land as field-edge paths. The extinguishment of the public rights of way would have a positive impact upon the agricultural land north and south of the railway as an unploughed margin would not be required to accommodate the footpath. The creation of a private means of access from St Marys Lane would adversely affect the use of the field and may have an adverse effect upon the local landscape. The proposed new footpaths on the western side of Warley Street will run as field edge paths and are likely to reduce the productive capacity of the land. These matters can be mitigated by detailed design and compensation.
- 5.22.65 Other than the creation of a new vehicular access off St Marys Lane, the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E28.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.22.66 Although the Ramblers contend that the proposal would require users to walk along St Marys Lane and the B187 with its attendant traffic noise and fumes, there would be no real change experienced by users as those who currently use E28 and FP 179 have to undertake such a journey to connect with FP 194 or to connect with FP 177.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.22.67 The available evidence suggests that E28 serves primarily a recreational function for members of the public undertaking walks of varying distances. Although the 9-day user survey did not record any evidence of use, the Ramblers case was that the path was used by members for both group and solo walks.
- 5.22.68 The main issues arising related to the use of verges along St Marys Lane, the length of the proposed diversion, the crossing point on St Marys Lane opposite the southern end of FP 177 and the proposed crossing of Warley Street north of the railway overbridge. An issue raised by OBJ 155 was the need for a new footpath westward from Puddle Dock to BR EX/272/183 at the M25 overbridge.
- 5.22.69 Those users who currently use E28 as part of a north – south journey incorporating FP 194 (and vice versa) have to make their way along St

Marys Lane from the end of FP 179. The verge either side of this part of the route is narrow, particularly on the eastern side near the bend on which FP 179 exits; the limitations of this verge were recognised in the stage 1 RSA which recommended the creation of a footway at this location.

- 5.22.70 The concerns expressed in the RSA were echoed by Mr Bird on behalf of the Ramblers. Network Rail submit that due to the limited current use of the crossing, the land take and expense to create a new footway could not be justified. It is not disputed that current users of E28 seeking to head south along FP 194 (or vice versa) will currently do so by means of St Marys Lane or the existing verges; there have been no recorded incidents or accidents on this section of the lane. Given that use of the verges as a means of connecting between two public rights of way does not appear to have given rise to problems in the past; it is unlikely to do so in the future.
- 5.22.71 The length of the diversion an individual user will experience is dependent upon the direction of travel and intended destination. To reach the northern end of FP 194 to continue south would increase journey distances by approximately 600m; as part of a longer recreational journey of 3.6Km (between Church Lane and Clay Tye Road) an increase of 600m would not inconvenience recreational users.
- 5.22.72 The proposed diversion via Puddle Dock would maintain the north-south connectivity provided by E28; in addition, the new footpath to link to BR EX/272/183 would provide an east-west connection in an area where the predominant direction of travel on the public rights of way network is north-south.
- 5.22.73 The proposal would require users of footpath 177 to cross St Marys Lane east of the mini roundabout at the junction with Clay Tye Road. The Ramblers contend that a formal crossing point is needed at this point to enable pedestrians to cross the road in safety. Those who currently use FP 177 or FP 194 as part of a north south journey via Puddle Dock currently have to cross the road at this point. Sightlines to the east and west are adequate to allow users to judge when it is safe to cross. The physical attributes of the crossing point would not be altered by the proposed diversion. Given the current use of this crossing point by the public, those who may be displaced by the closure of E28 would not find this crossing point inconvenient.
- 5.22.74 The proposed diversion would require users to cross Warley Street approximately 200m north of the railway overbridge. The road at this point has a speed limit of 60 mph with the majority of traffic travelling along the road at between 45 and 48 mph. Visibility in both directions at the proposed crossing point is good. The verge on the east side of the road is perhaps twice the width of that on the west; users will have the opportunity to stand in the verge while making a decision as to whether to cross. There are no proposals to install a formal crossing point at this location, however further works may be identified once a stage 2 RSA is conducted.
- 5.22.75 Both observations on site and the ATC data show that this section of Warley Street is well used by vehicular traffic. Despite this, during my site visits it

was possible to cross from one side of the road to the other without incident.

- 5.22.76 The proposed alternative would provide an east-west link to Puddle Dock crossing which would maintain north – south links to other public rights of way. The proposal would also create an additional east-west link between Puddle Dock and BR EX/272/183 at the M25.
- 5.22.77 The Equality and Diversity Overview report rating for E28 was green and no DIA was carried out. The increased distance a user wishing to head north on FP 179 would have to travel to reach FP EX/272/178 at the north-eastern corner of the trading estate might be an issue for some people. However, taking into account the physical conditions of the approaches to the crossing and its isolated, rural position, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Overall Conclusion**

- 5.22.78 Considering all the above, and all other matters raised in relation to E28, I conclude that the Secretary of State should include E28 within the Order as the proposal would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.23 **E29 Brown and Tawse**

### **Description of the crossing**

- 5.23.1 Footpath EX/313/39 crosses the London to Southend and Shoeburyness railway at E29 and connects with Thurrock FP 4 to form a north-south footpath running from the A27 south-east of Childerditch to Fen Lane, Bulphan. E29 is situated on the west side of the village of West Horndon. The surrounding area to the south of the railway line is predominantly agricultural and an industrial estate lies immediately north of the level crossing.
- 5.23.2 E29 is approached from the north via an unsurfaced cross-field then field edge path until the path reaches the Horndon Industrial Estate. At the industrial estate the path runs between fences towards the crossing. The corridor between the industrial estate is subject to vegetation overgrowth and undergrowth and is gated at its southern end. The crossing has pedestrian gates either side of the railway, ramped approaches and decking between the rails to enable pedestrians to cross safely. The approach from St Marys Lane is an unsurfaced field edge path which commences a little to the east of Wantz Cottages.
- 5.23.3 E29 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 75mph. The ALCRM score for this crossing is C9. The 9-day camera survey undertaken in July 2016 did not record any use of the crossing<sup>163</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of poor user behaviour at this crossing.

### **Description of the proposal**

- 5.23.4 It is proposed to close E29 to all users, extinguishing the PROW over FP EX/311/39 between the northern boundary of the western section of Horndon Industrial Estate and the Essex – Thurrock boundary and approximately 15m of FP 4 to the south of the crossing.
- 5.23.5 Current users of FP 4 heading north towards E29 would be diverted via a new 2m wide unsurfaced footpath in Network Rail land (approximately 280m in length) rising up the overbridge embankment to Childerditch Lane via a set of wooden steps.
- 5.23.6 Users would then cross the railway via the overbridge to a second set of steps at the north-western abutment of the bridge, proceeding down the bridge embankment to a new unsurfaced field edge path (approximately 200m in length) before re-crossing Childerditch Lane to a new unsurfaced footpath within the Industrial Estate (approximately 40m in length) to a new unsurfaced field edge path (approximately 250m in length) adjacent to

---

<sup>163</sup> NR25 3267-LON-E29 p 6



the northern boundary of the industrial estate to connect with the residual part of FP EX/313/39.

- 5.23.7 The infrastructure at the crossing would be removed and the railway boundary fence would be secured to prevent trespass. The proposed footpath on the south side of the railway would run on Network Rail land and the boundary fence relocated to prevent trespass onto the railway.

### **The Case for Network Rail**

- 5.23.8 The level crossing lies within the north south public rights of way that provide general long-distance walking routes in the area. The footpaths do not link directly to local amenities but form part of the connectivity in the wider context. Using the level crossing it is theoretically possible to undertake a recreational walk of over 4.5Km, with ongoing routes extending this further. The footpath between the two parts of the industrial estate is known to have been obstructed from time to time either by vegetation or other factors. The diversion will ensure the availability of this footpath route. The increase in distance arising from the proposal would be a maximum of 620m.
- 5.23.9 The proposal route was subject to a Stage 1 RSA. The RSA concluded that there were no issues associated with the proposals to use Childerditch Lane. ATC data<sup>164</sup> was collected on Childerditch Lane on the railway overbridge which showed an average 2-way daily traffic flow of 449 vehicles and 85<sup>th</sup> percentile speed of vehicles of 42.6mph (southbound) and 40.4mph (northbound) where the posted speed limit is 60mph.
- 5.23.10 The proposals were considered appropriate when the traffic data was considered on this section of the route. It was noted that the design amendment to include steps close to the bridge structure would entail vegetation clearance which would improve visibility over the bridge and the location of the access points to Childerditch Road would allow pedestrians to see over the bridge. No additional highway improvement measures were therefore considered necessary although vegetation clearance across the bridge would be beneficial.
- 5.23.11 Two alternatives had been considered prior to the current proposal being put forward. The first proposal was to divert users from FP 4 east on a new right of way in field margins south of St Marys Lane to join FP 142. From there the diversion would continue north using St Marys Lane to cross the railway using the existing bridge. A new PROW would then be created north of the railway from St Marys Lane along the eastern and northern sides of Horndon Industrial Park to join the existing footpath EX/313/39<sup>165</sup>. This easterly diversion was discounted due to road safety concerns; the footbridge at West Horndon station could not be used as an alternative to the railway bridge due to problems this would raise with revenue collection at the station.

---

<sup>164</sup> NR32/2 Tab1 page 81

<sup>165</sup> NR32/2 Tab2 page 145

- 5.23.12 The use of road walking on Childerditch Lane was generally of a concern to all consultees. An amendment was made to the route put forward at the first round of consultation which sought to place the proposed footpath closer to St Marys Lane, but it was noted that this introduced an unacceptable amount of road walking north on Childerditch Lane<sup>166</sup>.
- 5.23.13 This alternative proposal was subsequently revised to introduce the off-road footpaths and locate the footpath in Network Rail land south of the railway line. Minor amendments were also made to avoid the use of private land north of the industrial estate. It is acknowledged that the railway forms the administrative boundary between ECC and Thurrock Council and that both highway authorities will have to certify that the new route has been formed to their satisfaction before E29 can be closed. The proposed diversion brought pedestrians closer to the crest of the bridge where visibility was clearer. It is understood that ECC has not objected to the current proposal.
- 5.23.14 The height difference between the proposed field footpaths and Childerditch Lane is between 4.5m and 5m which would require 3 flights of 12 or less steps with suitable resting places incorporated and built in line with the designs set out in Inclusive Mobility. NR does not agree with the conclusions reached by those objecting to this proposal as to the effect these steps will have on the "accessibility" of the diversion route for existing users. Any such appraisal must take into account the context in which the crossing is being used today, and the wider journey of which it forms part.
- 5.23.15 The main issues in dispute on this crossing at inquiry centred on road safety. A common concern between objectors was the use of the Childerditch Lane overbridge, specifically as regards visibility.
- 5.23.16 For the Ramblers, Mr Russell suggested introduction of a priority working system on the bridge. To achieve priority working to create a footway over the bridge would require the give way line to be set back beyond the point where vehicles on the other side of the bridge could be seen. Such a scheme was not feasible at this location. Mr Russell acknowledged in cross-examination, that if priority working was something that was necessary to ensure safe use of the bridge, he "would have expected" it to be raised by the Highway Authority.
- 5.23.17 Part of the questions raised regarding road safety was the extent of forward visibility at the road bridge. Pedestrians entering Childerditch Lane from the steps up to the embankment will have varying visibility between 48m and 72.1m over the first 5m of the on-road walking route. Thereafter, pedestrians will have the visibility of 72.1m (that identified by Mr Burbridge as required by reference to Manual for Streets (MfS) for 30m of the on-road walking route. Visibility is then again more limited to between 72.1m and 48m over the last 5m section of the on-road walking route<sup>167</sup>. Is it therefore acknowledged that there is not visibility in line with Manual for Streets over the entire bridge.

---

<sup>166</sup> NR32/2 tab 3 page 265

<sup>167</sup> NR 152

- 5.23.18 However, the proposed route has also been assessed against the guidance used by ECC – ‘Assessment of Walked Routes to School’, noting that the stopping sight distance set out in the Highway Code are available over the entirety of the bridge. Given the frequency of vehicle movements over the bridge it is considered that there will be sufficient gaps between vehicles to give adequate crossing opportunities for pedestrians following the diverted path.
- 5.23.19 Mr Russell and Mr Burbridge take issue with the use of the ‘Walked Routes to School’ guidance. Network Rail is not suggesting that it supplants the Design Manual for Roads and Bridges (DMRB) or MfS in designing new road schemes. However, given that that is the guidance which ECC’s road safety experts have used in assessing the suitability (or otherwise) of the alternative routes proposed under the Order, NR maintains that it is properly an assessment to which the Secretary of State may have regard, in appraising the suitability of the proposed diversion route.
- 5.23.20 Having regard to traffic levels, and speeds, in this location, the visibility which is available over the road bridge, and Ms Tilbrook’s own assessment of walking over the bridge (including being passed by vehicles) it is considered that there is no safety issue with using this stretch of Childerditch Lane. Mr Burbridge and Mr Russell clearly disagree.
- 5.23.21 Network Rail maintains, however, that the Secretary of State may properly conclude that the proposed diversion route will be a suitable and convenient replacement for existing users.

### **The Case for the objectors who did not appear at the inquiry**

#### **C H Bird & Son (OBJ 057)**

- 5.23.22 There have been no incidents at this crossing in living memory. The proposed alternative over the railway bridge on Childerditch Lane will be considerably more dangerous for walkers, particularly as walkers will have to scale steps up the embankment side and then ‘pop out’ of the hedge into oncoming vehicular traffic. This type of bridge is dangerous enough for two-way traffic without pedestrians emerging into the road from the end of the bridge. As landowners, an objection is also made to the imposition of an additional 250m of public footpath will all the associated costs and regulations that would arise.

#### **Thurrock Council (OBJ 186)**

- 5.23.23 The Council formally objected to Network Rail’s initial proposals by letter of 16 May 2017. The Council had considered the proposal divert walkers along St Marys Lane and then along Childerditch Lane to the new footpath on the north side of the industrial estate. The Council is concerned about the safety of such a route, given that there was no footway on either road. The Council did not consider the proposal to be acceptable and objected to the closure of E29.

- 5.23.24 The Council also drew attention to the fact that up to May 2017, it had not been consulted by Network Rail on a proposal which affected public rights of way in Thurrock for which it was the Highway Authority.
- 5.23.25 In correspondence with Network Rail<sup>168</sup> dated 17 August 2017, Thurrock Council stated *"In regards to E29, based on the fact that Network Rail came into Thurrock Council and discussed the scheme, and that an objection still remains based on the route being offered, in particular the bridge, I have been authorised to remove our overarching objection to the fact that the Council and its residents were not suitably consulted. However please note, this does not mean that we no longer have a concern regarding the route option over the bridge on Childerditch Lane, and we still need to see the outcome of a stage 2 Road Safety Assessment before that objection can be removed."*

### **The Case for the Objectors who did appear at the inquiry**

#### **E & A Strategic Land (OBJ 105)**

- 5.23.26 It is the preference of the developer that the crossing remains open to facilitate movement between the land to the south of the railway, the industrial estate and the land to the north of the industrial estate.
- 5.23.27 The proposed diversionary route over Childerditch Lane is unsafe and not suitable. Visibility over the road bridge is poor and poses a potential risk to pedestrians walking in the carriageway, while drivers will have a limited time to react to pedestrians walking in the carriageway due to limited visibility. The alternative would add around 8 minutes journey time at ordinary walking speeds.
- 5.23.28 In addition, the diversion would constrain future development of the land to the north and south of the railway and could impact upon delivery of the most effective pedestrian options in meeting current and future travel needs for West Horndon.
- 5.23.29 When considering the safety of the proposed closure of the level crossing and a diversion of the route, it is accepted that the existing level crossing presents a potential risk to pedestrian safety and an alternative route should be considered. However, this alternative should represent an improvement in highway safety/risk to pedestrians and not seek to relocate the problem/risk onto the Highway Authority.
- 5.23.30 The shortcomings identified by the RSA for the red route initially considered are equally applicable to the proposed route<sup>169</sup>; it is of concern that the RSA for the current route did not identify any road safety issues on Childerditch Lane bridge which is of a similar design and standard as St Marys Lane overbridge. The inquiry heard that the auditors had visited 13 sites to review 17 options in 10 hours and 40 minutes; an average of 50 minutes

---

<sup>168</sup> NR 112 tab 186

<sup>169</sup> OBJ 105 Proof of Evidence, pages 7 and 8

per site inclusive of travel time. This perhaps explains how the auditors found issues on the 'red' route, but not on the promoted route.

- 5.23.31 In addition, the blue route incorporates two flights of wooden steps to allow pedestrians to join Childerditch Lane close to the railway bridge either side of the line. The current route is free from such obstructions; E29 has recently been upgraded with tactile paving, surfacing and ramps to replace the two steps previously in existence. In cross-examination, Ms Tilbrook acknowledged there were no stiles or obstructions on the existing route and that the current path ran over flat agricultural land; the proposal introduces such obstructions.
- 5.23.32 Network Rail dismissed use of the existing footbridge over the railway at West Horndon station as it was not compliant with the Equality Act 2010, yet the same issues would relate to the introduction of steps at Childerditch Lane bridge. The current alignment over the level crossing is free of such restrictions.
- 5.23.33 Furthermore, pedestrians would alight on Childerditch Lane on a narrow section of road, south of the railway bridge and directly into the flow of traffic approaching blind over the bridge. The same issue is also true north of the railway bridge. Given the lack of verge and footway over the bridge with severely restricted forward visibility for drivers, this presents a potential conflict, which has been ignored.
- 5.23.34 Although Network Rail acknowledged that forward visibility on Childerditch Lane bridge did not meet DMRB standards, they sought to justify their chosen route by reference to a lower technical standard. Under DMRB the required forward visibility would be in excess of 100m; using Walked Routes to School criteria would allow for 36m to 53m of forward visibility, whereas DMRB calculations show there is less than 30m. The route being promoted does not meet the required standard for forward visibility which impacts upon highway safety.
- 5.23.35 NR have control over a large area of land around West Horndon station. With the ownership within their control and the provision of similar footway diversions to those originally promoted with the red route (the sections found acceptable to the auditors) it is within the power of Network Rail to provide a new footway pedestrian bridge over the railway to the east of the existing St Marys Lane vehicular bridge. This pedestrian footbridge crossing with realigned footpath would offer a route free of conflict/risk.
- 5.23.36 The only point at which conflict between pedestrians and vehicles could occur would be the crossing of Station Road to the east of the station access, which is a safer location to cross than the existing footpath on St Marys Lane, thus not only removing the risks of the level crossing, but also improving further on highway safety. The current proposals for the blue route would incorporate 3 crossings of local roads, compared to 1 on the existing route and 1 safer crossing on the alternative via West Horndon station. The proposed diversion introduces additional risk to pedestrians which do not currently exist at E29.

### **The Ramblers (OBJ 148)<sup>170</sup>**

- 5.23.37 Footpath EX/313/39 runs north/south from Childerditch in Brentwood to West Horndon from where footpaths continue towards Mardyke and Bulphan. Save for the A127, the industrial unit at West Horndon and St Marys Lane, a walker can navigate over quiet open countryside and farmland for several kilometres. FP EX/313/39 is an integral part of the PROW network. Mr Bird considers that navigation of this route is straightforward.
- 5.23.38 An inspection of FP EX/313/39 in August 2017 showed clearly that the level crossing was used on a regular basis. The path was well worn, and muddy in parts; and many recent footprints were in evidence. Mr Bird could not understand why Network Rail did not record any pedestrians using this crossing in July. It is certainly being used. At E29 there are clear lines of sight in both directions — affording pedestrians a safe crossing.
- 5.23.39 The proposal will create a convoluted circular westward diversion which would involve climbing up or down steps on two embankments and crossing the hump-backed railway bridge on Childerditch Lane before returning to the present footpath. Mr Bird considers that navigating this diversion will not be straightforward. It will take a fit pedestrian an additional 15 minutes (800m) to walk and will be longer for groups and people with mobility problems.
- 5.23.40 The proposed steps up the two embankments onto Childerditch Lane will only be metres from the bridge. The blind spots result in extremely short lines of sight, giving only seconds for both pedestrians and drivers to see each other. For pedestrians caught attempting to cross the bridge at the same time as a vehicle approaches there is insufficient time and space for both the pedestrian and driver to take evasive action.
- 5.23.41 A walking group, which can be up to 40 strong, will take several minutes to cross the bridge. During that time, there is a high probability of pedestrians meeting vehicles while still on the road, thereby increasing the chances of an accident. By contrast, the clear lines of sight, safe standing areas and short crossing distance at the Brown and Tawse level crossing makes this a safer route. Furthermore, the steps proposed on the embankment could prove difficult and hazardous for pedestrians with mobility problems. Neither the statement of case (NR26 page 103) nor the design guide (NR12 page 58) specifies the standing area to be provided at the top of the steps next to Childerditch Lane.
- 5.23.42 It is Mr Russell's view that the proposed alternative route for E29 is simply not safe enough. It requires pedestrians to use the narrow hump-backed bridge on Childerditch Lane which does not have sufficient visibility. Ms Tilbrook accepted that the visibility requirements for DMRB could not be achieved but emphasised that users would be brought up onto the bridge in and around the crest, which would improve visibility. No plans have been

---

<sup>170</sup> OBJ 148 W-013 Mr Bird; OBJ 148 W-019 Mr Russell

put forward to show where exactly pedestrians will be “brought up” onto the bridge in this manner, so it is impossible for any interested parties to consider this further. Plans setting out the location of the suggested ‘landing area’ have not been provided; it has not been demonstrated as to what can be seen from the points at which pedestrians would emerge onto the roadside.

- 5.23.43 Mr Russell’s evidence is that for this crossing, not only is the DMRB standard not met, but according to Network Rail’s Note regarding visibility and steps at Childerditch Lane<sup>171</sup> visibility has been calculated ignoring the MfS reference point of 600mm (which is designed to ensure that small children could be seen). In this regard, the less onerous MfS visibility requirements cannot be met either. Instead, Network Rail placed reliance upon the guidance found in Assessment of Walked Routes to School which contains a one-off reference to the safe stopping distances found in the Highway Code.
- 5.23.44 The Highway Code sets out the least onerous visibility requirements, namely, the stopping sight distances if a driver were to carry out an emergency stop. Mr Russell and Mr Burbridge were adamant that the Highway Code distances are never used in the design of highways and bridges. Needless to say, Network Rail’s position here is in stark contrast to its approach to sightlines at its level crossings.
- 5.23.45 Furthermore, it seems that the RSAs have not assessed any need to cross the bridge. They appear to assume that pedestrians will walk along one side of the bridge, which accords with the “blue route” at the stage they were carried out. Mr Russell considers that priority working of the bridge with a narrowing of the carriageway and the creation of a footway would be suitable safety mitigation at the bridge. Mr Bird considered the requirement for pedestrians to cross the crown of the bridge in a carriageway where HGVs and other vehicles were travelling was a “terrifying prospect”<sup>172</sup>. The proposed is unsuitable for group walks because it is unsafe.
- 5.23.46 The proposed alternative is also too long and inaccessible. From Network Rail’s note it seems likely that 63 steps will need to be navigated – 33 on the north east side and 30 on the south east side – clearly limiting access for users with mobility issues. Wooden steps – as indicated in the design freeze – risk becoming slippery in wet conditions. To divert users from this setting to the hump-backed bridge on Childerditch Lane, without any proposed safety mitigation, is utterly unreasonable. Those users will experience a much greater safety risk, albeit on infrastructure that Network Rail would no longer be responsible for.

### **Inspector’s Conclusions**

#### **SOM4(a) The likely impacts on landowners, tenants, local businesses, the public, utility providers and statutory undertakers,**

---

<sup>171</sup> NR 152

<sup>172</sup> Mr Bird oral evidence in chief

**including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 5.23.47 The creation of new public rights of way in the margins of fields to the west of Childerditch Lane and to the north of the industrial estate will have an adverse effect upon the land, but not one which would impact upon any party's ability to access their property.
- 5.23.48 There were concerns about the impact upon the public of the proposal in relation to road safety in requiring pedestrians to cross Childerditch Lane by means of the road bridge and in relation to the accessibility of the proposed route which requires the creation of stepped access to the carriageway from adjacent fields.
- 5.23.49 As regards the impacts upon landowners, occupiers and tenants, there does not appear to be issues which could not be dealt with through detailed design and compensation.

**SOM4(b) Impacts on other users**

- 5.23.50 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.23.51 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.23.52 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.23.53 The creation of two flights of steps adjacent to the south-eastern and north-western parapets of the Childerditch Lane overbridge will have some localised impact upon the landscape as installation will require vegetation clearance on the bridge embankment. Any adverse effect will, however, be highly localised and is unlikely to have a significant impact upon the immediate landscape.
- 5.23.54 The land crossed by the proposed footpaths is arable land and the productive capacity of the fields through which the footpaths would run will be reduced. These matters can be mitigated by detailed design and compensation.
- 5.23.55 Other than the creation of the new footpaths and the associated infrastructure, the permanent removal of the infrastructure associated with



the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E29.

**SOM4(g) Any other environmental impacts including noise and health**

5.23.56 No matters were raised regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.23.57 The available evidence suggests that E29 serves primarily a recreational function for members of the public undertaking walks of varying distances and that it serves as part of a longer route between Childerditch and Bulphan. Although the 9-day user survey did not record any evidence of use, the Ramblers case was that the path was used by members for both group and solo walks.
- 5.23.58 The main issues arising from the proposal related to the view of oncoming vehicles which pedestrians would have when emerging at the parapets of the bridge on the north-western and south-eastern sides, and the suitability of steps as a means of access to the road.
- 5.23.59 Guidance on visibility when designing new roads and bridges is found in the appropriate sections of the DMRB and in MfS2. It was acknowledged by Network Rail that the sighting requirements of DMRB could not be satisfied at Childerditch Lane. There was a dispute as to whether the less onerous sighting requirement found in MfS2 could be met at this location. Network Rail placed emphasis upon the safe stopping distances found in the Highway Code (referred to in Assessment of Walked Routes to School) as justification for the proposed alternative route being appropriate for public use.
- 5.23.60 In cross-examination, Ms Tilbrook acknowledged that Network Rail had considered the standards found in DMRB and MfS2 where there were questions of visibility. Network Rail had not considered the guidance found in Assessment of Walked Routes to School or the Highway Code prior to understanding that ECC had made its assessment using that guidance.
- 5.23.61 Although the recommended safe stopping distances for a vehicle travelling at a given speed are set out in the Highway Code, those guidelines are likely to be inappropriate in this case where drivers have a limited onward view of the road due to the humped nature of the bridge. In any event, the appropriate tool for undertaking an assessment of safe stopping distances is that found in DMRB HD19/15. The forward visibility requirements of DMRB and MfS2 are not met in this case.
- 5.23.62 Network Rail submit that the forward visibility for users of the path can be enhanced by the provision of a standing or waiting platform at the top of the final flight of steps. No details of the final position of this standing platform were submitted which may be a matter to be addressed under

detailed design. However, my site visits revealed that when standing at the end of the bridge parapets, the design of the bridge<sup>173</sup> obscured forward visibility along Childerditch Lane.

- 5.23.63 Standing at the end of the north-western parapet where any waiting platform would be constructed, the central section of the bridge obstructed the view along the road immediately south of the bridge. To see over the crown of the bridge for oncoming traffic requires the user to step into the carriageway and advance to the crown of the bridge; as Mr Bird noted in cross-examination, this would require the driver of any vehicle approaching the bridge to take evasive action.
- 5.23.64 Similar conditions prevail at the south-eastern parapet where the design of the bridge obstructed the view of the road immediately to the north of the crown; pedestrians stepping into the carriageway to cross the bridge to the north-western parapet will be unsure as to whether a vehicle is approaching the bridge. In comparison, a user standing at the recognised decision point at E29 (2m away from the nearest running rail) benefits from sightlines in all directions which exceed the required industry standard.
- 5.23.65 It was suggested that it would not have been possible for the stage 1 RSA to have been properly completed in the time allocated to it. Whether or not that is the case is matter for conjecture. However, it is somewhat surprising that no issues were identified in relation to Childerditch Lane bridge given its physical attributes and the proposed access points from the adjacent fields, and its similarity to St Marys Lane bridge where such issues had been identified.
- 5.23.66 The Equality and Diversity Overview report rating for E29 was green and no DIA was carried out. The decision not to proceed with a DIA was made based on the conditions on the ground at the time of the report. As noted by Mr Burbridge and as was evident on site, the crossing has been upgraded by the rail operator since that initial assessment had taken place.
- 5.23.67 In place of the steps and stiles at the railway boundary, c2c has installed a fully accessible ramped access and has replaced the stiles with pedestrian gates. The approach to the crossing from the south is over flat agricultural land which is negotiated relatively easily and is not limited by stiles. E29 is therefore a crossing which is open to use by those with a wide range of physical abilities.
- 5.23.68 The proposed alternative would require any user to negotiate 32 steps on one side of the bridge, 30 steps on the other and to cross the road on a blind summit. Although Network Rail submit that the steps would be designed in line with principles set out in *Inclusive Mobility*, the introduction of steps as an alternative to the existing step-free route, would limit the ability of some users to navigate the proposed alternative.

---

<sup>173</sup> Childerditch Lane bridge has a central section over the rails which is higher than the wings of the bridge

- 5.23.69 I consider that the proposed alternative is neither suitable nor convenient. The requirement for users to cross Childerditch Lane bridge from a position where the user cannot determine whether a vehicle is approaching the crown of the bridge places the users at significant risk which is unlikely to be overcome by detailed design. No works are proposed to the fabric of the bridge and Network Rail have discounted the suggestion that the bridge could be subject to priority working with a segregated footway being constructed.
- 5.23.70 Taking all these matters into account and weighing them in the balance with the improvements which have been carried out at the crossing itself, I find that there are issues of safety and accessibility in relation to access over the proposed alternative. The steps are likely to limit use by some existing users who would not find the step-free access on the existing route an issue. The proposed alternative route would also expose current users of E29 to unnecessary risk in requiring them to emerge onto and cross Childerditch Lane at the road bridge.
- 5.23.71 The proposal would reduce access for those with mobility impairments such that including E29 in the Order would fail to advance equality of opportunity or foster good relations between those who share a relevant protected characteristic and those who do not share it. I consider it to be likely that the PSED would not be met in this case which adds weight to my recommendation that this crossing should not be included in the Order.

#### **Overall conclusion**

- 5.23.72 Taking account of all the above and all other matters raised in relation to E29, I conclude that the Secretary of State should not include E29 in the Order as the proposed alternative would not provide existing users with a suitable nor convenient alternative route.

## 5.24 **E30 Ferry and E31 Brickyard Farm**

### **Description of the crossings**

- 5.24.1 Footpath EX/BENF/22 crosses the Fenchurch Street to Shoeburyness railway line via E30 approximately 310m to the east of Benfleet railway station and provides a link between Ferry Road and the south-western part of Hadleigh Castle Country Park.
- 5.24.2 E30 is approached from the south from a partly tarmacked, partly unsurfaced path leading from the footway of Ferry Road. When open for public use, the crossing was approached by steps with wicket gates in the railway boundary fence.
- 5.24.3 E30 has been temporarily closed under a series of TTROs since 2014 due to insufficient sighting of oncoming trains<sup>174</sup>. The crossing currently has an ALCRM score of M13; prior to the temporary closure, the ALCRM score had been C2 with usage estimated at 189 users per day. There had been 2 near miss incidents in 2014 involving elderly users and children which resulted in a closure under a TTRO; users were diverted to E31.
- 5.24.4 Footpath EX/BENF/12 crosses the same railway line via E31 which is located approximately 80m to the east of E30. To the south of the crossings is the B1014 Canvey Road which carries traffic to and from Canvey Island. To the west of the crossings is the intertidal mudflats of East Haven Creek, whereas to the north and east is the town of Benfleet and the Country Park.
- 5.24.5 E31 is approached from the south on an uneven, unsurfaced path which commences at its junction with FP EX/BENF/31. When open for public use, the crossing had wicket gates in the railway boundary fence and had an ALCRM score of C4. Between March 2008 and March 2014 two near misses and an instance of misuse were recorded at the crossing. A 9-day camera census undertaken in July 2016<sup>175</sup> recorded 103 pedestrians using the crossing, one of whom was an accompanied child and the remainder of whom were adults.
- 5.24.6 A risk assessment of E31 in February 2016 revealed that sighting distances for vulnerable users was not compliant<sup>176</sup>; whistle boards provide mitigation for the deficiency in sighting but are not effective outside the NTQP. A further risk assessment in 2018 revealed that third party vegetation (from the Country Park) was encroaching upon the railway and had reduced visibility from the crossing. The vegetation is growing on land designated as a SSSI; consent from Natural England is required for any vegetation clearance in order not to have an adverse impact upon local populations of glow worms and bird species. E31 is closed under a TTRO due to insufficient sighting.

---

<sup>174</sup> NR31/1 page 130-131

<sup>175</sup> NR25 3267-LON-E31 p7

<sup>176</sup> NR 143

- 5.24.7 E30 and E31 are passive level crossings where users are required to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails at this point and carries passenger and freight trains at speeds of up to 75mph.

### **Description of the proposal**

- 5.24.8 It is proposed to close E30 and E31 to all users, extinguishing the existing public footpath rights over the crossings. On the southern side of the railway, users would be diverted west along the footway of Ferry Road (B1014) to an existing underpass under the railway to the east of Benfleet railway station. From the underpass, users would then travel east via a new surfaced footpath through the railway station car park. At the eastern end of the car park a new 2-metre wide unsurfaced path within Network Rail land will be created to provide a link to the remainder of FPs EX/BENF/22 and EX/BENF/12 on the north side of the railway.
- 5.24.9 Those parts of FPs EX/BENF/22 and EX/BENF/12 would be extinguished between the railway and Ferry Road and between the railway and FP EX/BENF/31. Infrastructure at the level crossings would be removed and the railway boundary fence secured to prevent trespass.

### **The Case for Network Rail**

- 5.24.10 Prior to its closure, the accessibility of E30 was severely limited by the steps via which the crossing is reached. These exclude use of the crossing to wheelchair users and many people with limited mobility that would be unable to use the steps and access the track. The approach routes are unpaved and uneven which may also cause significant difficulty to wheelchair users and people with limited mobility for which the uneven terrain may by itself make the route un navigable.
- 5.24.11 Unpaved roads on the northern side of the railway may reduce the accessibility of the E31 crossing for those with limited mobility. The crossing also requires users to negotiate a stile.
- 5.24.12 An equality and diversity overview recommended that a full DIA was undertaken. The DIA concluded that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route is considered an appropriate solution. Additional measures were recommended for consideration including the installation of CCTV in the underpass and the installation of tactile paving and dropped kerbs where appropriate; such matters can be discussed with the Highway Authority as part of detailed design.
- 5.24.13 E30 and E31 provide good connectivity to long distance footpaths to the west, south and east. Pedestrians wishing to access the level crossings from the east using FP EX/BENF/31 have an approximate distance of 4,500m to walk before reaching them. Pedestrians wishing to access the level crossings from the east on the north side of the railway have an approximate distance of 4,000m to walk before reaching them.

- 5.24.14 Residents in those properties at the north of Canvey Island closest to the level crossings, would still have a walk of approximately 2,000m to reach E30 and E31. In comparative terms the length of the diversion is relatively short for those undertaking a journey on foot to the crossings on existing public rights of way to the crossings.
- 5.24.15 The diversion retains the connectivity of the original route by the use of land adjacent to the car park and the railway and by using the footways of public roads. Where necessary, the verges at the side of the private road leading to FP EX/BENF/31 can be re-profiled to provide a 'step off' for pedestrians.
- 5.24.16 It is considered that the provision of a level walking route from Benfleet station into the Country Park will be a significant overall benefit, although users from Canvey Island will have to walk further. As the routes across the level crossings form part of long-distance paths it is considered that the additional length of diversion route is not significant.
- 5.24.17 The closure of both crossings is dependent upon the provision of a new footpath along the southern edge of the Benfleet station car park, continuing on to a new PROW along the southern boundary of the Country Park (within Network Rail land), connecting into the remainder of the two footpaths which currently cross the railway.
- 5.24.18 In response to submissions made by the objectors, the new footpath must be provided to close E30 and also, separately, to close E31. It would not be open to Network Rail to close one of the crossing points and keep the other open. That is because in order to create the new footpath through the station, Network Rail will have to move the existing boundary fencing between the car park and operational railway land by 1.5m to provide the necessary space for the footpath. This, in turn, would further restrain the sighting available at either E30 or E31; sighting at either crossing with the new footpath in place would not be sufficient.
- 5.24.19 The provision of technology in this location would be complex, given the proximity to the station and need to warn of both stopping and non-stopping trains; an integrated MSL system would be required to retain one or both crossings. Some reconfiguration of existing car parking spaces (in particular, the disabled parking spaces at the western end of the car park) would be required, but the same number of spaces would be retained<sup>177</sup>. The footpath through the car park will be segregated to prevent conflict arising between pedestrians and car park users.
- 5.24.20 Three main points were raised by those objecting to the closures: (1) length of the diversion, (2) the directness of the diversion; and (3) the environment through which users would pass.
- 5.24.21 In respect of length, NR maintains that looking at the crossings in the context of the purpose for which they are used (it appeared to be

---

<sup>177</sup> Mr Kenning's evidence in chief

common ground that use was for leisure / recreational purposes), and the wider journey of which they form part, the additional distance is not such as to deter people from making that journey - or to render the diversion not suitable and convenient. Although it is accepted that users from the south might not be travelling from Canvey Island, and that some users of the crossings may be inconvenienced by the diversion, an assessment of the impact on users overall has to be taken. Similarly, anyone using the crossings to access the Country Park is likely to then undertake a journey of some distance as the main facilities of the park are located some distance to the north east of the crossings.

- 5.24.22 Similar concerns were raised in respect of the directness of the proposed diversion – specifically the apparent ‘dog leg’ for walkers seeking to access the Country Park from Canvey Island, or generally from the east of the level crossings. It is not considered that the proposed diversion would deter users; in the context of the journeys which people would be making, and the purpose of the journeys being undertaken, the proposed diversion is considered to be suitable and convenient.
- 5.24.23 Finally, in terms of the environment, users accessing the country park from Canvey Island currently have to cross the Canvey Road causeway – which is an urban environment. Users arriving from Benfleet will have passed through an urban environment. Anyone travelling by bus to Ferry Road to access the Country Park via the crossings today is already having to traverse the environment proposed as part of the diversionary route (i.e. walking along Ferry Road).
- 5.24.24 Similarly, an individual arriving by train will have to utilise the underpass and Ferry Road if seeking to access the Park by means of the crossings, as opposed to the main entrance uphill from the station. Mr Bird’s evidence for the Ramblers was to the effect that if arriving by train he would do just that as he had no interest in walking uphill on Station Road.
- 5.24.25 It appeared to be common ground that the provision of the new footpath through the car park will in fact improve accessibility for the Country Park - albeit Mr Lee and Mr Bird made clear they did not consider this overcame their objection to NR’s proposals.
- 5.24.26 There is clearly a difference of opinion between ECC, the Ramblers, and NR as to whether the proposed diversion route is suitable and convenient. Network Rail maintains that the Secretary of State can, however, be satisfied that the proposed diversion route provides a suitable and convenient replacement for existing users, having regard to the purpose for which the crossings are used today and in the context of the wider journeys that users are likely to be undertaking. NR therefore maintains that the Order can be confirmed without modification.

## **Representations**

### **Julian Fautley (REP 01)<sup>178</sup>**

5.24.27 No objection was made to the closure of the crossings, Mr Fautley suggested that a new footpath was created on the north side of the crossing between point P428 and the car part to the east of the station (plot 15). This (approximately 50m) length of land has recently been cleared of vegetation. The creation of this footpath would allow the crossings to be closed without routing users over the top of a steep hill (at point T007 and down again on Station Road) and the railway could be safely crossed at the underpass.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Paul Gyton (OBJ 016)**

5.24.28 There is no evidence to justify the closure of E31 on safety grounds. There does not appear to be any proposal to increase line speeds so the risk level will remain unchanged. The TWAO process is intended to give Network Rail the powers to carry out major enhancements to the rail network; but here it is using those powers to simply close public rights of way. Any other landowner would have to approach the Highway Authority for a footpath closure; the process is being used to bypass the Highway Authority.

5.24.29 No proposals have been put forward to improve crossing safety, short of closure. The building of bridges or use of technology have been explicitly excluded in the consultation stages. If the crossings are considered dangerous, then other mitigating measures should be considered first. Closure should only occur if those measures prove inadequate.

5.24.30 Visibility at E31 towards Benfleet and the west is excellent. There is a curve in the track to the east of the crossing, but it is far enough away for the crossing to be negotiated in safety. The alternative route would not be too inconvenient but is likely to be abused by cyclists looking for a short cut to the Country Park; this abuse would extend far beyond Network Rail's car park. No proposals have been put forward which would exclude use of the new footpath by cyclists.

#### **Environment Agency (OBJ 172)**

5.24.31 E31 is in close proximity to an important flood defence asset and the Agency own land in close proximity to the crossing (but it is not registered) and therefore full design details need to be supplied to understand the impact on the Agency's land. A permit is needed for flood risk activities in, over or under a main river or affecting a flood defence pursuant to the Environmental Permitting (England & Wales) Regulations 2016. In view of the proposed disapplication of these Regulations, this will need to be addressed as part of the final agreed Protective Provisions in the Order.

---

<sup>178</sup> REP 01 did not appear at the inquiry



## **The Case for the Objectors who did appear at the inquiry**

### **The Ramblers (OBJ 148)<sup>179</sup>**

- 5.24.32 Prior to the closure of E30 and E31, the crossings provided quick and easy access between the Country Park and residential properties on the north side of the railway with Canvey Island and South Essex Marsh Nature Reserve on the south side. These access points have considerable value for the local community. Their value to the community is borne out from the census information provided by Network Rail of 103 persons using E31 over a nine-day period and the estimate of 189 people using E30 prior to its closure.
- 5.24.33 The proposed route does not improve provision for walkers and is therefore contrary to the ECC's ROWIP; the proposal would take users away from a rural setting to a longer, noisy, unattractive route. There will be an increased risk of accidents involving pedestrians and vehicles, particularly in the station car park.
- 5.24.34 These two crossings should not be closed by way of the diversion proposed by Network Rail. If closure of these crossings is sought, then either a bridge should be constructed or only one of the crossings should be closed, with the other one left open.
- 5.24.35 All parties were agreed that the Country Park is a key destination; Mr Bird referred to the park's "fantastic facilities" and Mr Lee, on behalf of ECC, stated that "it is an incredible resource – not just for the area but more regionally as well". Mr Bird also highlighted the value of the marshes in the surrounding areas to the south of the railway line for longer walks. The importance of this pedestrian connection point (across both of these level crossings) cannot, therefore, be overstated.
- 5.24.36 Once the use of these connection points is appreciated, it will be apparent that the proposed diversion is entirely unsuitable. It was accepted by Network Rail that Canvey Island was a clear point of origin for some users. For people approaching the crossing from Canvey Island there is no alternative crossing point of the railway to the east of Canvey Road. Any users originating from this location will need to undertake the full diversion – an estimated extra 10-15 minutes one-way (20- 30 minutes for a "there and back" route).
- 5.24.37 Due to its dog-legged nature, the diversion would take users completely out of their way, if they are travelling to the Country Park from the south. What is more, the majority of this diversion is in an urban setting, alongside a busy road, through an underpass which is busy even outside of rush hour and the station car park. The diversion is totally different to the rural nature of the existing paths.

---

<sup>179</sup> OBJ 148 W-021 & 022 Mr Bird

- 5.24.38 The overall combination of added length change in scenic quality and dog-legged nature of the diversion makes this route unsuitable and inconvenient. The Ramblers would add that the DIA for E30 appears to have significantly undervalued the impacts that this proposal may have on persons with protected characteristics.
- 5.24.39 If Network Rail considers that one or both of these crossings need to be closed for safety reasons due to insufficient sighting then the following options should be pursued: (i) Permanent closure of only one of the crossings, with the other remaining open; (ii) the construction of a bridge to serve as an alternative for both crossings.
- 5.24.40 It appeared from Mr Kenning's evidence that it would not be possible to close only one of the crossings because the fencing associated with the diversionary route through the car park would prevent sufficient sighting from being achieved at the remaining crossing. However, if E30 were permanently closed, then the alternative route would be via E31; consequently, the alternative route through the car park would not be required and the sighting from E31 would not be affected in the way contended for by Network Rail. Network Rail has not demonstrated that active technology, such as an integrated MSL system could not be an appropriate mitigation measure if only one crossing remained.
- 5.24.41 Due to the nature of this "strategic" project, Network Rail has not properly assessed a grade-separated solution at this location, preferring to utilise existing infrastructure as opposed to creating new infrastructure. A cost-benefit analysis does not appear to have been undertaken for a bridge as a joint solution to both crossings; Mr Fisk accepted in cross-examination that if a combined cost-benefit analysis score were to be calculated for both crossings, it would increase.
- 5.24.42 There is provision within s48 of the 1992 Act for the Secretary of State to order Network Rail to provide a bridge or tunnel as an alternative to an at-grade crossing if that crossing poses a danger to the public. Network Rail appears to have crossing-specific safety concerns at these crossings. It is noted, however, that there is a two-year deadline on any such order being made, time running from the date of the application; there may be limited applicability of that provision for these proposals.

### **Essex County Council (OBJ 195)<sup>180</sup>**

- 5.24.43 The crossings provide a through route between Benfleet, Hadleigh Castle Country Park and Canvey Island, the Thames Estuary Path and the South Essex Marshes. Access into the Country Park provides health and leisure benefits to residents of all ages and abilities. The loss of amenity from the closure of E30 can only be mitigated by the retention of E31 or the provision of a bridge to serve as a replacement for both crossings.

---

<sup>180</sup> W3/1 Mr Lee; W7/1 Mr Cubbin

- 5.24.44 The proposed alternative is considerably longer than the current access over the railway and is almost entirely urban in character. To arrive at the same point using E30 would require the users to walk an additional 619m; the diversion of E31 would be 775m longer. The alternative takes walkers away from the current desired destinations of the country park or the sea wall into a busy built environment.
- 5.24.45 Three main issues were the inconvenience created by the 'dog leg' alternative route; the feasibility of achieving the fenced walkway through the car park; and the safety risks presented by diverting people on to the highway.
- 5.24.46 At the outset it was NR's case that the route was suitable, and that the additional length added was not inconvenient. Ms Tilbrook discussed the type of uses of the crossings that were considered in reaching the alternative route proposal and it was clear that this interpretation was largely based on use for longer leisure walks.
- 5.24.47 In cross examination Ms Tilbrook accepted that the Country Park to one side of the crossings and the Marina to the other side of the crossings were reasonable destinations for users. It was agreed that those users most affected by the 'dog leg' created by the diversion would be those partaking in these shorter leisure walks. The 'dog-leg' would introduce an additional 14 minutes to journey times (one-way) and that this would have a greater impact on vulnerable users.
- 5.24.48 In cross examination, Ms Tilbrook and Mr Kenning both agreed that the proposed route would be more inconvenient for those users walking from Canvey Island to the Country Park. In re-examination both stated that this did not mean that their opinion with regard to the suitability and convenience of the alternative route was affected.
- 5.24.49 ECC had initial concerns regarding the risk of conflict between users of the proposed path within the car park and users of the car park. Greater clarity as to the nature of the segregation and of use of other railway land for the footpath was welcomed. However, a question remained as to whether the inevitable reconfiguration of the car park could be achieved.
- 5.24.50 The final issue also related to road safety. Those diverted from E31 will be required to step onto the access road to the Marina in order to access the footway alongside Ferry Road. The proposal takes users through a short section with no footway and a high verge. Ms Tilbrook suggested that this could be dealt with by increased maintenance; however, ECC's position was that the issue at this location required more than cutting. Ms Tilbrook accepted this, relying on resolution through detailed design.
- 5.24.51 In sum, ECC are grateful for the additional detail about the fenced footway through the car park, and assurances that the verge issue can be revisited in detailed design. ECC submits that the only conclusion at this location is that the 'dog leg' created by this proposal is inconvenient for those undertaking shorter walks. The proposed alternative is not direct, it does

not maintain desire lines, and is considerably longer than the current crossing with an additional 600m added to the length.

- 5.24.52 In the re-examination of Mr Kenning, it became apparent that the configuration of the fencing required for the new footpath would impact the sighting for E31 such that if E30 were to be closed and the fence provided, E31 could not remain. In light of this, ECC's support for the closure of one crossing (E30) and the retention of the other (E31) cannot be sustained. ECC therefore objects to the closure of both crossings.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.24.53 The proposed alternative route would run over existing footways and public rights of way until reaching Benfleet station car park. From the entrance of the car park, the proposed footpath would run over Network Rail's land until it connects with the remainder of FP EX/BENF/12. It is unlikely that any adverse impact upon landowners or tenants or local businesses will arise as a result of this proposal.
- 5.24.54 There is likely to be some disruption to the operation and use of the car park whilst it is reconfigured to accommodate the new footpath, such disruption is likely to be of short duration; members of the public using the car park as part of their use of the railway may experience some short-term disruption.
- 5.24.55 There was some concern regarding users of the crossings being required to use a footway at the side of the busy Ferry Road and the underpass which carries FP EX/BENF/75 under the railway. These are facilities which are already available to the public and which appeared to be well-used during my site visits.

#### **SOM4(b) Impacts on other users**

- 5.24.56 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.24.57 The Environment Agency raised concerns with regard to the proximity of the flood defences at Hadleigh Ray. However, other than the works which would be required to remove the infrastructure at E30 and E31 and the erection of fencing to prevent trespass onto the railway, there are no physical works which would have any adverse effect upon the Hadleigh Ray flood defences or upon land in which the Environment Agency had an

interest. There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.24.58 The railway forms the southern boundary of the Benfleet and Southend Marshes SSSI. The proposal would result in a new section of PROW being created within Network Rail land bordering the SSSI. The proposal is unlikely to have any impact on the SSSI.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.24.59 The creation of a new footpath in the vicinity of the car park will require the reconfiguration of the boundary fence between the car park and what is currently operational railway land to provide sufficient land for the proposed path. Overall, however, the appearance, character and use of the land as a car park will remain unchanged.

5.24.60 Other than the creation of the new footpath and the associated infrastructure, the permanent removal of the infrastructure associated with the pedestrian crossings, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E30 and E31.

**SOM4(g) Any other environmental impacts including noise and health**

5.24.61 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.24.62 The available evidence suggests that when E30 and E31 had been open and available for use, the crossings served a primarily recreational function as a gateway to the Country Park and as a link to the Thames Estuary path and Canvey Island. The submissions of the parties suggest that the crossings can be used by public undertaking walks of varying distances within the immediate area. The estimates of use of E30 and the 9-day survey of E31 suggests that both crossings had been moderately well used by the public when they were open.

5.24.63 The main issues arising from the proposal related to the length and directness of the proposed alternative path and the impact this would have upon users. Although there was discussion at the inquiry regarding the provision of technological solutions to mitigate deficient sighting at the crossings, or the provision of a bridge as a substitute for both crossings, this was not the matter before the inquiry.

5.24.64 It was contended that only one of the two crossings needed to be closed and that if E30 was to be closed, then E31 would provide an alternative

route for the public to use. However, Network Rail did not pursue a case whereby E30 could be closed without an alternative route being provided. The alternative route for E30 utilising Network Rail land adjacent to the car park would lead to insufficient sighting being available on E31 were it to remain open; sighting issues would also arise on E30 if E31 were closed and the alternative route provided. The proposed route is therefore put forward as an alternative to both crossings. The issue is therefore whether the proposed route would be a suitable and convenient alternative to users of both crossings and is not an issue of whether one crossing should remain open as an alternative for that to be closed.

- 5.24.65 E31 is approached from the south by means of a double-step stile over a metal fence; E30 is approached from the south by means of a flight of steps and a pedestrian gate. The proposed alternative would follow the existing footway alongside Ferry Road and under the railway by means of an existing underpass. The proposed route through the car park would also be level with a sealed surface. The alternative route is therefore likely to be more accessible to a greater number of users than the existing crossings.
- 5.24.66 The proposed alternative route would increase journey times and distances for those users approaching from the north or south and wishing to travel between the Country Park and Canvey Island and vice versa. The impact upon any user would depend upon the user's point of origin and intended destination. The parties expressed opposing views as to how the proposed alternative route would impact upon those seeking to cross the railway as part of a walk in the area.
- 5.24.67 For those approaching the crossings from the south and east and wishing to go north to the Country Park the proposed route would add between 650 and 730m to a journey. For those approaching from the west and travelling to the Country Park, the proposed alternative would have little impact upon journey times and distances. Those starting a journey from the car park in Benfleet or arriving at the station by train or bus are unlikely to be adversely affected by the proposal as the underpass and the new path would provide an equally convenient means of reaching the Country Park.
- 5.24.68 It is unlikely that any user would regard the ends of the current crossings as destinations in themselves, and the objectors are likely to be correct in their view that the crossings act as connection points between the Country Park and Canvey Island. Equally, Network Rail's analysis that anyone seeking to use the current crossings is likely to have undertaken a journey of some length in order to reach either E30 or E31 is likely to be correct. Those users approaching the crossings from the east along the Thames Estuary path or from the residential areas of Canvey Island are likely to have undertaken a journey of at least 1.5Km to reach the crossings. Given that the intended destination of anyone seeking to use the crossings may also be some distance away (north into the country park or south onto Canvey Island, such users are unlikely to be inconvenienced by the increase in journey times and distances arising from this proposal.
- 5.24.69 There was no evidence provided that the crossings were used for utilitarian purposes; those who use the crossings as part of circular walks may be

affected more than those on longer recreational walks, but any impact is unlikely to be significant.

- 5.24.70 The proposed alternative follows the footway on the north side of Ferry Road. Other than requiring pedestrians to cross the station access road, pedestrians would be segregated from vehicles throughout the proposed route with the new footpath being separate from the car park. The underpass provides a means by which pedestrians can cross the railway without risk. The proposed alternative is therefore relatively risk free and would be safe for users.
- 5.24.71 Both the Ramblers and the Council submit that the character and amenity of the proposed alternative is wholly different to the existing crossings. The proposed alternative is described as 'urban in character' whereas the current crossings are considered to be in a 'rural setting'.
- 5.24.72 Although the crossings are sandwiched between the Country Park and Hadleigh Ray, they are on the fringes of Benfleet and the northern edge of Canvey Island. The footway along Ferry Road provides users with views over the marshes of East Haven Creek and is not wholly an urban environment. Users making their way to the crossings from the south will have to negotiate the Canvey Road causeway or pass through Benfleet if arriving by train or bus; users approaching the crossings are therefore already used to travelling through the environment through which the proposed alternative will pass. The characteristics of the proposed route are unlikely to discourage people from using it as a means of access to the Country Park.
- 5.24.73 The Equality and Diversity Overview rating for both crossings was Red which required full DIAs to be undertaken. The overview noted that although the steps and unpaved approach routes to E30 and the unpaved approaches and stiles at E31 may restrict accessibility for some people, the underpass, potential for steep gradients and unsurfaced paths meant that accessibility could be reduced.
- 5.24.74 The DIAs for both E30 and E31 recognised that the increase in journey times and distances may disproportionately impact upon older people and those with mobility impairments. However, it also noted that the existing crossings were not easily accessible for such groups due to the physical characteristics of the crossings and that those currently making use of the crossings are likely to have the intention and ability to undertake a longer walk. Network Rail's proposal is to provide a surfaced path adjacent to the car park which will be accessible to most users and which will provide access to the Country Park thus avoiding the steep gradient found on Station Road.
- 5.24.75 The proposed alternative route would be predominantly over level ground with a sealed surface and segregated from vehicular traffic. In comparison to the existing crossings, the proposed alternative route is likely to be more accessible to those with mobility impairments than the approaches to E30 and E31 are. Although the increase in distance may be an issue for some users, taking into account the characteristics of the current crossings there

should be no disproportionality introduced to persons with protected characteristics (over and above the effects likely to be experienced by the rest of the population). The inclusion of these crossings in the Order is unlikely to lead to a likelihood that the PSED would not be met.

**Overall conclusion**

- 5.24.76 Taking account of all the above and all other matters raised in relation to E30 and E31, I conclude that the Secretary of State should include E30 and E31 in the Order as the proposed alternative would provide a suitable and convenient alternative for those who would wish to use the crossings.



## 5.25 **E32 Woodgrange Close**

### **Description of the crossing**

- 5.25.1 Footpath 189 crosses the Fenchurch Street to Shoeburyness railway line in Southchurch, a suburb of Southend-on-Sea. Footpath 189 provides a link between the A13 and Pilgrims Close and Woodgrange Close. Residential properties border the crossing and railway to the south; to the north-west of the crossing are further residential properties whereas to the north-east lie the playing fields and school buildings of Southend High School for Girls.
- 5.25.2 E32 is approached from the south along a surfaced path running between property boundaries to the railway boundary. The approach to the crossing point and the crossing point itself has recently been renovated with the crossing point having been moved approximately 10m to the west of the previous crossing. The crossing has decking furniture to enable pedestrians to cross safely. The approach from the north has also been re-aligned to bring users back to the original point where FP 189 crosses the railway boundary. There are gates in the railway boundary fence.
- 5.25.3 E32 is a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger trains at line speeds of up to 75mph. The ALCRM score for this crossing is C4. In January 2017 a person was struck and killed at the crossing; in October 2013 a person was struck and killed at the crossing. Between 2001 and 2019 there have been 34 instances of near misses or misuse reported near the crossing.
- 5.25.4 A 9-day camera census was undertaken in July 2016; 268 pedestrians were recorded as using the crossing, one of whom was elderly, ten of whom were accompanied children, 28 were unaccompanied children, one child was carried in a pushchair and the remainder were adults. 53 bicycles were recorded as being pushed over the crossing with 5 being ridden<sup>181</sup>. Use by unaccompanied children is expected at this crossing as there are two schools nearby.

### **Description of the proposal**

- 5.25.5 It is proposed to close E32 to all users, extinguishing the PROW over the crossing and over the whole of FP 189 between the A13 and Woodgrange Close.
- 5.25.6 Current users of E32 wishing the pass between the A13 and Woodgrange Close would be required to travel west along the footway of the A13, then south along Lifstan Way passing under the railway via the underbridge. Just beyond the underbridge, users would have a choice of turning east up the stepped access path leading to Butterys and then onto Woodgrange Drive and Woodgrange Close, or to continue along Lifstan Way to the junction with Woodgrange Drive and then proceed until reaching Woodgrange Close.

---

<sup>181</sup> NR25 3267-LON-E32 page 7

- 5.25.7 Other than having to cross the access to Apollo Drive and the two access points into Buttery's, the alternative route follows the sealed surface footways adjacent to roads.
- 5.25.8 The total additional length users would be required to walk if using the step-free route would be approximately 960m. For users able to use the stepped route into Buttery's the additional length would be approximately 740m.

### **The Case for Network Rail**

- 5.25.9 The last risk assessment at E32 was undertaken on 14 February 2017. A speed restriction of 70mph was imposed after that risk assessment due to insufficient sighting. In May 2017 the crossing was physically moved 10 meters towards London to improve the sighting and the speed restriction was removed. As a result of moving the crossing, sighting distances became compliant in all directions<sup>182</sup>.
- 5.25.10 A DIA scoping exercise recommended that full DIA was undertaken. The DIA<sup>183</sup> concluded that due to the low to moderate use of the crossing by groups with protected characteristics, closure and redirection along the proposed diversion route was considered to be an appropriate solution. The DIA suggested that benches and flat rest areas could be provided to mitigate the increase in journey length. These matters could be considered at detailed design if considered feasible and appropriate.
- 5.25.11 The alternative route retains the connectivity to both sides of the railway via the surfaced footways and the existing underbridge.
- 5.25.12 Whilst the maximum additional distance for users taking the step-free route would be in the region of 960m (approx. 10-15 mins), it should be borne in mind that there were no critical services located on either side of the crossing (the main facilities were primarily to the west) and that it is not possible to access the playing fields immediately to the north of the crossing from FP 189 – people would have to traverse the length of FP 189 and then enter via the school entrance to the east. The alternative route along Lifstan Way was broadly 1:20; it was considered that the replacement route was in line with the provisions of *Inclusive Mobility*.
- 5.25.13 The proximity to a school, and the fact so many of the incidents recorded at the crossing involve young people, is obviously a key point of concern. This was not be a crossing where the installation of technology would address the nature of the incidents that had been recorded. Given the nature of the near misses, Network Rail was concerned that young people would simply choose to ignore any MSL system that was introduced. Whilst Network Rail does not seek to justify closure of a crossing based on its specific safety issues, E32 was an example of a crossing where the benefits of closure, even from a safety perspective alone, are apparent.

---

<sup>182</sup> NR 143

<sup>183</sup> NR 120 E32 Woodgrange Close

- 5.25.14 NR maintains that the Order may properly be confirmed without modification.

**The Case for the Objectors<sup>184</sup>**

**Mr & Mrs Conk (OBJ 071)**

- 5.25.15 The crossing is used by them daily to get to work, to visit grandparents, to get to nursery and to take their son to Beavers. Their parents live on the Wick estate and closure of the crossing would have a massive impact on their mother's ability to visit her grandchildren as she had limited mobility and does not drive. Furthermore, the closure of the crossing would mean they would rely more on using the car to take the children to school as the alternative would mean a 20-minute walk as opposed to a 5-minute walk.
- 5.25.16 The proposed alternative route via the Butterys will be inconvenient for those with small children in pushchairs and the longer route via Woodgrange Drive and Lifstan Way will require users to walk up the long steep hill to the A13 junction.
- 5.25.17 The crossing has a high footfall and its closure would see a large impact upon the local community. There are two schools on the north side; a large number of pupils use the crossing. Closing the crossing would mean a longer journey time for them and cause huge inconvenience.
- 5.25.18 It was also queried as to why closure of the crossing was being sought when it had recently been renewed and upgraded.

**Mr & Mrs Boxall (OBJ 098)**

- 5.25.19 The crossing is used regularly as part of a journey on foot to visit immediate family. If the crossing were to be closed such a journey would be undertaken by car due to limited ability to walk long distances; closure would mean a walk of approximately 5 times the current journey distance.
- 5.25.20 The crossing has a high footfall and its closure would see a large impact upon the local community. There are two schools on the north side; many pupils use the crossing. Closing the crossing would mean a longer journey time or a car journey for them and cause huge inconvenience with more vehicles on our overcrowded roads.

**D J Stansfield (OBJ 104)**

- 5.25.21 Closing the crossing will cut off access to two schools and its club on Southchurch Boulevard from that part of the catchment area on the south of the railway. Those affected will be forced to take a detour of over a mile to reach the schools and their playing fields. The inconvenience caused will encourage some individuals to risk crossing the railway which would have

---

<sup>184</sup> None of the objectors to the inclusion of E32 in the order appeared at the inquiry

the opposite effect to that intended. Closing the crossing will not affect the service provided by c2c Rail.

**Steve Mulvey (OBJ 109)**

- 5.25.22 The crossing has not been a notable hazard or cause of disruption in the 35 years of use of this commuter line. The crossing was upgraded in March 2017 by moving the crossing point about 15m towards Shoeburyness; the entire crossing has been renewed with gates and new fences. It appears to be ludicrous to propose closure of this crossing after such public expenditure.
- 5.25.23 The local newspaper briefly reported the intentions of Network Rail in 2016 but there was no local awareness of public consultation events. Public notice of the proposals only appeared at the ends of the crossing in March 2017 and after the consultation events had been held.
- 5.25.24 There may be a case for limiting use of the crossing to daylight hours as drivers of trains may not see pedestrians on the crossing after dark. Simple technology is available to make the gates operate during daylight hours. There seems to be little evidence that more and faster trains can be run on this line; the newer, safer trains being run by c2c have resulted in journey times increasing by 10 minutes between Southend and London. If Network Rail are seeking to reduce operational costs, why have they spent money on upgrading the crossing? If the crossing is causing delays (which is doubtful) where are the statistics to support that claim?
- 5.25.25 The proposed alternative route adds about a mile in distance and involves walking up the steep hill on Lifstan Way. There is an associated risk from vehicular traffic on walking at the side of a road, which may be greater than that of crossing the railway line.
- 5.25.26 The closure of the crossing is not in the public interest as claimed by Network Rail. It is in Network Rail's interest to relieve itself of the responsibility of making the railway safe for users and of reducing its operating costs.

**Southend-on-Sea Unitary Authority (OBJ 140)**

- 5.25.27 There are a number of alternatives available to Network Rail other than the closure of the crossing – installing a footbridge, a secure gated crossing; the provision of CCTV; improved lighting, signage and warning and other such steps to ensure safety at the crossing. The safety justification advanced by Network Rail is not accepted and closure of the crossing is a disproportionate response to the risk. The closure of the crossing would result in the severance and extinguishment of the route previously provided by FP 189 which is used regularly by members of the public; the alternative proposed is almost 1km in length.

### **Christopher Gasper (OBJ 143)**

- 5.25.28 The crossing has been personally used since 1975 to gain access to Southchurch Road and Southchurch Boulevard. There have been a few incidents at the crossing in the last 43 years but only 3 that Mr Gasper is aware of.
- 5.25.29 The extensive works that have recently been undertaken to move the crossing several yards west give much better sight lines to drivers of trains from Thorpe Bay as they come around the bend in the track. Pedestrians are much better prepared when looking for trains. As the trees along the track towards Thorpe Bay are kept trimmed, there is no reason to remove this much used crossing.

### **Leslie Harrod (OBJ 166)**

- 5.25.30 This crossing is safe. There have been no accidental casualties here in living memory. To close the crossing in case of a suicide attempt would be nonsensical; it is as easy to jump in front of a train at a station.
- 5.25.31 The alternative route adds at least a mile along busy roads and is not a viable alternative. Sight lines are clear at the crossing and there is good visibility of the track in both directions from the crossing. The crossing is an ancient PROW and there is no good reason to close it.

### **Dan Ager (OBJ 167)**

- 5.25.32 The crossing is a valuable route for many pedestrians, especially the less able and children in pushchairs. An alternative route is significantly longer in distance and has steep steps; this would add 30-40 minutes to a journey.
- 5.25.33 The crossing serves three schools; Greenways, Southend High and Southchurch High. There is a combined school population in excess of 3,000 pupils and staff, some of who use the crossing. Interestingly, the survey counting 'traffic' was not at the key times of day when students and staff arrive and leave school. Closing the crossing could further increase the number of people who drive to the schools rather than take the shorter walking route over the level crossing.
- 5.25.34 Investment in the crossing was undertaken in April 2017; whilst the upgrade is welcomed, the standard and quality of workmanship is poor.

### **Inspector's Conclusions**

#### **SOM 4(a) The likely impacts on landowners, 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**

- 5.25.35 The extinguishment of FP 189 would not have any adverse effect upon the ability of the owners and occupiers of properties on Pilgrims Close to access their properties. There may be some restriction upon pupils of Southend

High School for Girls to access the playing fields via the entrance from Pilgrims Close although as pupils they are likely to be invitees of the school which appears to have a private right of access to the playing fields from Pilgrims Close.

- 5.25.36 The closure of that part of FP 189 to the south of the crossing would have no impact upon the owners and occupiers of adjacent properties; it is highly likely that the adjacent property owners would experience less disturbance with the cessation of members of the public using the footpath to access the crossing.

**SOM4(b) Impacts on other users**

- 5.25.37 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.25.38 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.25.39 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.25.40 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E32.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.25.41 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.25.42 The available evidence suggests that E32 is used on a regular basis by residents living north and south of the railway for a utilitarian journey within this part of Southend-on-Sea. The evidence does not suggest that FP 189 and E32 is used for recreational purposes.

- 5.25.43 The main issues arising from the proposal related to the length of the proposed diversion, the inclusion of an alternative route which had stepped

access and the inconvenience closure of the crossing would have upon those who currently use the crossing. Although infrastructure and technological alternatives to closure had been suggested by some of the objectors, the mitigating any safety risk by such matters and thereby securing the retention of the crossing was not the matter before the inquiry.

- 5.25.44 The Equality and Diversity Overview report rating for E32 was red and no DIA was carried out. The issue of stepped access along part of the suggested alternative route was recognised in the DIA which considered that there would be a disproportionate impact upon some users who have difficulties in negotiating steps.
- 5.25.45 The DIA concluded that due to low to moderate use of the crossing by those with protected characteristics (as derived from the 9-day camera survey and consultation responses) closure of the crossing was considered to be an appropriate solution.
- 5.25.46 However, the DIA also noted that it was likely that the crossing formed a key route for users of the amenities of the area, particularly children accessing schools and that although the diversion provided for a step free route, the diversion added an additional 1.3Km to the journey which would disproportionately impact upon the elderly, the very young and those with impaired mobility.
- 5.25.47 The DIA appears to have been conducted prior to the 2017 upgrade of E32 in that it noted that access to the crossing required the negotiation of a step and uneven surfaces. The re-configuration of the crossing has improved the approaches to the crossing such that these potential restrictions are no longer present.
- 5.25.48 The DIA recommended the provision of level rest areas and benches along the proposed route which Network Rail state can be considered under detailed design. At a gradient of 1:20, the slope on Lifstan Way may not require such facilities. Provision of such infrastructure will not however mitigate an increased journey of between 1 and 1.3Km for those current users of E32 who share a protected characteristic and who would be disproportionately impacted by the proposed diversion. The objectors described the impact the proposed closure would have on members of the local community and that those with mobility impairment would have difficulty undertaking their journey via the proposed alternative due to its length or the option via Butterys due to the stepped access.
- 5.25.49 It is recognised that the main entrances to the schools whose land abuts FP 189 are located on the A13 and that there are a number of routes by which these entrances can be reached. For those current users who use E32 as part of a journey to school (unaccompanied children), one of those routes would be one of the suggested alternatives. The increased distance and time required to undertake a journey on foot to the schools from the south side of the railway is likely to disproportionately impact upon those of school age.

- 5.25.50 There are issues with the proposed diversion in terms of overall length and accessibility, particularly with that section of stepped access between Lifstan Way and Butterys. The length of the proposed diversion, the stepped access on one of the suggested options and the gradient on the other are likely to limit the use of the alternative route by some existing users of E32 who would not find the existing crossing to be an issue.
- 5.25.51 Whilst there would be safety improvements for users in not traversing the railway on the level, the alternative would be long and circuitous for current users of the crossing and therefore unsuitable and inconvenient for them. The closure of E32 would have a disproportionate effect upon those with mobility impairments and the young, such that there is a likelihood that the PSED could not be met, and this adds weight to my recommendation not to include this crossing in the Order.

**Overall conclusion**

- 5.25.52 Taking account of all the above and all other matters raised in relation to E32 Woodgrange Close, I conclude that the Secretary of State should not include E32 in the Order as the proposed alternative would not provide existing users of the crossing with a suitable or convenient alternative.



## 5.26 **E33 Motorbike**

### **Description of the crossing**

- 5.26.1 Footpath EX/279/136 crosses the Grays to Pitsea railway and provides a link between the urbanised and residential areas of Vange to the north of the railway and the Vange and Fobbing marshes to the south of it. The A13 runs to the north of the crossing by means of an elevated section of road. To the north-west of the A13 is an area of housing which is linked to the crossing by FP EX/279/213 which runs underneath the elevated section of road.
- 5.26.2 E33 is approached from the north-west by an unsurfaced path running under the A13 and from the north-east by an unsurfaced track leading from Pitsea Hall Lane. There is crossing furniture at the crossing to enable pedestrians to cross safely. To the south of the crossing, the land is predominantly marshland which forms part of the South Essex Garden RSPB reserve. Footpath EX/279/136 runs in a generally south-westerly direction over the marshes to the boundary with Thurrock.
- 5.26.3 E33 has pedestrian gates in the railway boundary fence with the railway being elevated above the surrounding land to the south which requires the user to negotiate a short embankment. E33 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 70mph. The ALCRM score of this crossing is C4. A 9-day camera census undertaken in July 2016 recorded 159 pedestrians and 3 cyclists using the crossing with the busiest day being Sunday 24 July when 30 pedestrians and 2 cyclists were recorded<sup>185</sup>; all users were adults with no users with protected characteristics being identified.
- 5.26.4 Sightlines at E33 are not compliant with industry standards for pedestrians on the up line observing the approach of a train travelling in the up direction. Whistle boards are present at E33 to mitigate insufficient sighting, but the installation of other audible warning systems which would work within the NTQP have not been installed due to the proximity of Pitsea station and East Tilbury crossing.

### **Description of the proposal**

- 5.26.5 It is proposed to close E33 to all users, extinguishing the PROW over the crossing and that part of FP EX/279/136 north of the railway between the crossing and the junction with FP EX/279/213.
- 5.26.6 Current users of FP EX/279/136 wishing to access E33 from the north would be required to travel east over the unsurfaced path which runs to Pitsea Hall Lane, cross Pitsea Hall Lane at the road level crossing and turn south on the footway before re-crossing Pitsea Hall Lane a little to the south of the

---

<sup>185</sup> NR25 3267-LON-E33 p 7

entrance to Cromwell Manor. Users would then follow a 2m wide unsurfaced footpath enclosed between fences leading to a new boardwalk running over the marsh to the south of the railway. The boardwalk would then link to an existing footbridge over a drain and onto a new unsurfaced 2m wide footpath on the south side of the railway to connect with the residual path of FP EX/279/136 as it heads south over the marshes. The maximum additional length current users would have to walk when using the diversion is approximately 900m.

- 5.26.7 Footpath EX/279/136 would be extinguished from south of the railway to its junction with FP EX/279/213. Infrastructure at the level crossing would be removed and the railway boundary fence secured to prevent trespass.

### **The Case for Network Rail**

- 5.26.8 The wider PROW network provides long distance leisure routes to the southwest and then south of the level crossing to Fobbing and Corringham approximately 6,000m from the level crossing. The alternative diversion route would increase the length of this long-distance PROW. To the east of the level crossing there are long distance leisure public rights of way to South Benfleet approximately 4,500m away. The diversion would not significantly affect the length of these routes.
- 5.26.9 To the north of the level crossing the footpath provides links to Pitsea and Vange which lie to the south of Basildon. Users approaching the crossing from the north would be required to use the whole of the alternative route to access public rights of way to the south west. The alternative diversion route provides access from Pitsea and Vange for leisure walking to the south of the railway, albeit with a longer length of walking; as the camera census and consultation responses suggest that the principal use of the crossing is for leisure purposes, the additional journey times and distances are considered acceptable.
- 5.26.10 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.26.11 The proposal route was subject to a Stage 1 RSA; concerns were raised about pedestrians being required to walk along a section of Pitsea Hall Lane on the western side of the carriageway where no footway or notable verge was present. A high number of HGVs generally travelling at excessive speeds were observed on Pitsea Hall Lane giving rise to an increased risk of collisions between pedestrians and vehicles. Crossing points of Pitsea Hall Road were included in the final design as a result of the Audit. It is considered that the eastern footway is suitable and will continue to be used by pedestrians in the same manner as they do currently.
- 5.26.12 ATC data<sup>186</sup> showed an average 2-way daily traffic flow on Pitsea Hall Road of 3,780 vehicles and 85<sup>th</sup> percentile speed of southbound vehicles of

---

<sup>186</sup> NR32/2 tab 1 p 9

25.2mph where the posted speed limit is 30mph. The proposals were considered appropriate when the traffic data was considered on this section of the route.

- 5.26.13 It is acknowledged that the diversion will involve users walking for longer (both in terms of distance and time) to access the marshes and ongoing footpath network to the south of the railway. Ms Tilbrook, also, fairly acknowledged that that impact is likely to be greatest on those closest to the crossing undertaking a short walk into the marshes, although it was considered such users would be limited in number. Having regard to the purpose for which the crossing is used, and how it sits within the wider network, Ms Tilbrook remained of the view that it would provide a suitable and convenient replacement for existing users.
- 5.26.14 ECC have not raised any concerns in respect of the proposed diversion. The two proposed crossing points of Pitsea Hall Lane will provide an improvement for pedestrians seeking to travel east-west across Pitsea Hall Lane. The crossing points will be provided with tactile paving and dropped kerbs; there is no intention to provide a zebra crossing south of Cromwell Manor.
- 5.26.15 Mr Bird, for the Ramblers, highlighted that E33 provides access to the RSPB nature reserve. It is emphasised that the link to the nature reserve would be maintained through the diversion route; a matter acknowledged by the RSPB response in the second round of consultation<sup>187</sup>. Equally, visitors parking at the Wat Tyler Country Park would need to walk north on Pitsea Hall Lane and onto FP EX/279/136 in order to access the RSPB nature reserve via E33 today; the proposal would reduce the distance to the reserve by approximately 200m.
- 5.26.16 Concerns were raised by Mr Gandy, on behalf of Mr Liddell and Cromwell Manor Functions, as to the impact of the Order proposals on Cromwell Manor and the events business run there. Ms Tilbrook, Mr Kenning and Mr Billingsley explained how NR had sought, and would continue to seek, to reduce the impact on Cromwell Manor. The Cromwell Manor landholding was split into two sites; one parcel was used as the 'event' site and the other was the 'marsh' site. The proposed footpath was on the interface between the two but would be located on the 'event' site. Screening and a 1.8 metre fence on the north side of the footpath would limit intrusion on the 'event' site.
- 5.26.17 Mr Billingsley expressed the view that, having regard to the fact that the footpath sat at the southern end of the 'event' site, and that NR had indicated that they were willing to discuss other screening measures in addition to what is already there, he had "difficulty in seeing" how the new PROW would impact on the business. Mr Gandy clearly disagreed. However, as was put to Mr Gandy in cross-examination, no documentation, or calculations were provided to the inquiry setting out how likely it was that there would be an impact on Cromwell Manor or what that impact might be

---

<sup>187</sup> NR05 p 185

- the information before the inquiry is limited to what is set out in the Statement of Case.

- 5.26.18 NR maintains that it has identified a suitable and convenient alternative replacement for existing users and has correctly struck the balance between the needs of those existing users and the affected landowner. The Order may properly be confirmed without modification.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Paul Gyton (OBJ 016)**

- 5.26.19 There is no evidence to justify the closure of E33 on safety grounds. There does not appear to be any proposal to increase line speeds so the risk level will remain unchanged. The TWAO process is intended to give Network Rail the powers to carry out major enhancements to the rail network; but here it is using those powers to simply close public rights of way. Any other landowner would have to approach the highway authority for a footpath closure; the process is being used to bypass the highway authority.
- 5.26.20 No proposals have been put forward to improve crossing safety, short of closure. The building of bridges or use of technology have been explicitly excluded in the consultation stages. If the crossing is considered dangerous, then other mitigating measures should be considered first. Closure should only occur if those measures prove inadequate.
- 5.26.21 Visibility at E33 is perfectly adequate to allow users to cross safely. The proposed new route will cross an area of wet ground; making a path in such an area is a significant undertaking and will require regular maintenance. The costs of maintenance should not fall on the landowner who has had a path dumped on him and ECC are short of money and struggle to maintain the existing network; maintenance costs should lie with Network Rail in perpetuity.
- 5.26.22 The proposed alternative route is lengthy. Given that the crossing is easy to use in a safe manner, the public should not be forced to take a lengthy and unnecessary detour.

#### **Neil Hughes (OBJ 107)**

- 5.26.23 There is good visibility in both directions at this crossing. The proposed alternative has no free parking and adds a significant extra walk; the crossing is used by many visiting the RSPB reserve and who carry bulky, heavy equipment with which to observe wildlife. The additional distance resulting from the diversion would prove a challenge. The additional distance would make the site inaccessible for those with mobility problems.

#### **David Cornwell (OBJ 100)**

- 5.26.24 E33 is currently the prime entrance to the Vange Marsh RSPB reserve. The crossing is close to public transport links and free parking. The proposed alternative would add approximately 1 mile to a journey on foot to reach

the same place and would make this important amenity inaccessible for those with walking difficulties. Mr Cornwell is unaware of any safety problems with this crossing as trains travel at a slow speed on approach to, or when leaving from Pitsea station.

**Sylvia Brown (OBJ 118) & Andrew Brown (OBJ 120)**

- 5.26.25 The crossing provides direct access to the Vange Nature Reserve. Mr & Mrs Brown use the crossing regularly and say that it is used by many others who visit the reserve to observe wildlife. It would be a great inconvenience if the entrance is moved elsewhere as a longer walk would be difficult for those with mobility problems.

**Graham Glombek (OBJ 153)**

- 5.26.26 The crossing is a convenient access point to the RSPB reserve; closing the crossing will cause a significant increase in time, distance and inconvenience to access the nature reserve. Car parking is available in the housing estate north of the crossing and access is via the footpath from the estate and under the A13. Access to the reserve via the crossing takes about 5 minutes. The alternative would add an additional 15 minutes to a visit; there and back would require an additional 30 minutes which is not reasonable. The alternative would require users to park at Pitsea station incurring additional costs which is unreasonable. Parking at Wat Tyler Country Park is not available after 19:00 in summer and 17:00 in winter; evening visits would be curtailed or made inconvenient by having to park on public roads north of the railway and then walk the whole of the proposed diversion.

**BNP Paribas on behalf of Royal Mail Group (RMG) (OBJ 156)**

- 5.26.27 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.
- 5.26.28 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.
- 5.26.29 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Pitsea Hall Road.

**The Case of those Objectors who did appear at the inquiry**

**Cromwell Manor Functions (OBJ 129)**

- 5.26.30 The efficiency of the railway is not materially affected by E33, nor would its closure eliminate or reduce the impact on the operation of the railway of

Pitsea Hall crossing to the east and the Vange Wharfe crossing to the west. Network Rail should seek a solution to its problem within its own landholding by building a footbridge and not move its problems onto third party landholdings. There is no evidence of the crossing contributing to delays and no evidence of potential upgrades to the line which would require closure of the crossing.

- 5.26.31 The proposed diversion would bisect the property at Cromwell Manor and remove the privacy enjoyed by those hosting or attending functions at the property; the fact that members of the public will be able to walk past and observe hitherto private functions is likely to deter many customers who value and pay for exclusive use of the property.
- 5.26.32 A large part of the marketability of the property lies in it having uninterrupted views over that part of the marsh which forms part of the property and the photographic opportunities which those open views present. The imposition of a footpath or the erection of a screening fence would eliminate exclusivity of use which would severely impact the business. Security of the property would also be compromised and lead to increased costs in providing measures to counteract loss of security.
- 5.26.33 Although the footpath would run on the southern boundary of one land registry parcel, the landholding comprises the house, grounds and marsh as one unit. The contiguous nature of the two land parcels which make up Cromwell Manor provide for clay pigeon shooting which would be compromised by the imposition of a footpath. The business is only just viable; the footpath may well result in the closure of the business and lead to an uncertain future for the building and grounds. None of those who gave evidence for Network Rail to the effect that the business would not be impacted have taken the time to visit or gain an understanding of the business carried on at Cromwell Manor.
- 5.26.34 The proposed route is through marshland and adjacent to a creek which will make construction difficult, perhaps impractical, and attract users closer to boggy land which may present a danger. The proposal would require pedestrians to cross Pitsea Hall Lane twice; a very busy road with vehicles travelling at differing speeds.
- 5.26.35 The temporary use of the car park at Cromwell Manor as a site compound will limit the capacity of the car park for that temporary period and may deter customers due to the visual impact that a site compound would have. The impact of the proposal on Cromwell Manor is wholly disproportionate to the problems generated by the crossing. There are engineering or technological solutions to the crossing which could be implemented without impacting upon third party property. In the alternative, a diversion onto RSPB property which is already open to the public to the south of Cromwell Manor should be proposed.
- 5.26.36 The justification to close this crossing is not proven. The proposed diversion is not acceptable or reasonable. The impact upon third party land and business is substantial. The proposal should be rejected.

### **The Ramblers (OBJ 148)<sup>188</sup>**

- 5.26.37 The Ramblers consider that this crossing serves as a key north-south connector between Vange and its surrounding area and the scenic marshes and RSPB nature reserve. The existing route is quick, and it is direct. By contrast, the proposed diversion is convoluted and unattractive, taking users alongside industrial units to the northern side of the railway line and requiring them to cross the busy Pitsea Hall Lane twice.
- 5.26.38 Crucially, the question is not whether the diversion will enhance east-west connections or improve connection points for visitors to the RSPB reserve arriving by car. Those are unlikely to be the groups currently served by the level crossing. The real question is whether it provides a suitable diversion for those using the crossing. As Mr Bird, on behalf of the Ramblers, made clear, to consider this, the Inspector should consider the impact on users travelling north to south.
- 5.26.39 Ms Tilbrook accepted in cross-examination that if a user approaches the crossing from Vange to the north, he or she will need to walk the full diversion of 900m. That is around 25 minutes one way, factoring in the time needed to cross Pitsea Hall Lane; an additional 50 minutes (almost an hour) for a "there and back" walk. Ms Tilbrook also recognised that there were "probably some shorter walks – people using local access – there and back – immediately to [the] north and north east"; however during re-examination, when questioned about the biggest impact being on people living in Vange, she noted that there were a "limited number of people in close proximity to the level crossing". It is impossible for Ms Tilbrook to know what proportion of users are using the crossing from Vange without any origin and destination surveys.
- 5.26.40 Mr Bird's evidence was clear. For those travelling in a north-south direction, the diversion would present a major obstacle and will put people off. He has direct experience of the route, having used it on several occasions. In Mr Bird's view, the route would be used by people to keep fit, walk dogs and for general leisure purposes. He does not consider the alternative to be suitable for these users; tactile paving would not be an effective safety measure at the bend on Pitsea Hall Road.
- 5.26.41 Finally, Mr Bird highlighted safety concerns associated with Pitsea Hall Lane. Network Rail provided no details as to what type of crossing would be installed at the location near to the "S-bend" (to the south of the Pitsea Hall Road level crossing). The design freeze plan simply states: "crossing point to be provided". The design guide (NR12) on p. 24 has a picture of a "tactile crossing example" that clearly shows a zebra crossing, but Ms Tilbrook informed the inquiry that there was no intention to put a zebra crossing in place here. Mr Bird explained that there were blind spots at this point where a pedestrian could not see vehicles around the corner – this is in a context where large HGV vehicles use the road. He was worried about group safety

---

<sup>188</sup> OBJ 148 W-020 Mr Bird

and ultimately concluded that there was a higher safety risk using Pitsea Hall Lane than in using E33. In his words, "I'd far rather cross E33".

- 5.26.42 The fact that users, like Mr Bird, may perceive an additional safety risk on the alternative route, further supports the Ramblers case that it is not acceptable.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.26.43 The only landowner affected by the proposed alternative route is Cromwell Manor. The proposal will not impact upon the landowner's ability to access his property as the proposed route has been amended from that originally put forward to avoid the footpath running through the main gates of the property and along the drive.
- 5.26.44 In evidence, Mr Gandy described the impact the footpath would have upon the business being carried out at Cromwell Manor. The business provides a building and grounds for private functions where the hirer can have exclusive use of the whole property. The property is operated as one unit although registered with land registry under two separate titles which have a common boundary to the south of the house. There are extensive and uninterrupted views over Vange marshes from the grounds of the house and these views provide a backdrop for wedding and other photographs taken by clients.
- 5.26.45 To mitigate intrusion caused by the creation of the footpath, Network Rail propose the erection of a 1.8 metre wooden palisade fence. Mr Gandy submits that Network Rail have failed to understand the nature of the business carried on at Cromwell Manor. The proposed erection of a wooden fence would separate the two parts of the landholding and would effectively block the uninterrupted views over the marshland; such a proposal is an illustration of the point being made by Mr Gandy.
- 5.26.46 The use of the car park as a site compound for the storage of materials and personnel would also have an adverse impact upon the landowners' business albeit on a temporary basis of around 3 months.
- 5.26.47 Disturbance and loss arising from the proposal are matters which can be addressed under section 28 compensation provisions and under the compensation code in relation to the temporary use of the car park. Although Mr Gandy did not quantify the financial impact upon the business which the creation of the footpath would have, it is likely that the proposed alternative route would have a significant impact upon the business which compensation may not mitigate.
- 5.26.48 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However,



the only alterations to Pitsea Hall Lane being proposed are for the installation of tactile paving and dropped kerbs to define the proposed crossing points of the road; such works would not prevent RMG's vehicles or personnel from passing along Pitsea Hall Lane.

#### **SOM4(b) Impacts on other users**

- 5.26.49 Mr Gandy contended that the closure of E33 would not alter the impact that Vange Wharfe or Pitsea Hall crossings would have on the operation of the railway. This may be correct as both those crossings are CCTV controlled crossings where all traffic over the crossings is regulated to the requirements of trains. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.26.50 The proposed footpath would run over part of Vange Marsh which will be crossed by a boardwalk to mitigate the proposed path being periodically flooded. The proposed location of the alternative footpath is currently prone to flooding; there is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.26.51 Vange and Fobbing Marshes SSSI is located to the south west of the crossing. Although the proposed footpath would cross part of the adjacent marsh, the proposal is unlikely to have any impact on the SSSI.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.26.52 The proposal does not affect agricultural or forestry land. The erection of a 1.8 metre fence at Cromwell Manor and the creation of a boardwalk would have minor impacts upon the immediate landscape although in the context of the urban fringe of Pitsea and Vange, the impacts are likely to be minor. Other than the creation of the new footpath and the associated infrastructure, the permanent removal of the infrastructure associated with the pedestrian crossings, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E33.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.26.53 No representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.26.54 The available evidence suggests that E33 provides a means of access to and from Vange Marshes for leisure purposes. There is no evidence that the crossing was being used for utilitarian purposes. No party provided any evidence as to the origins or destinations of those who currently use the crossing; although evidence of personal use and the purpose of that use was provided by Mr Bird and by those who had submitted their objections in writing. It is likely that there will be some who use the crossing as part of a longer recreational walk and equally that there will be some who use the crossing as a convenient means by which to access the marshes from those residential properties northwest of the A14.
- 5.26.55 The main issue arising related to the length and indirectness of the proposed alternative route for current users and the risk to users in crossing Pitsea Hall Road.
- 5.26.56 There was debate between the parties as to where current users of the crossing had originated from, Network Rail not having undertaken any origin or destination surveys as part of their assessment. Although Ms Tilbrook contended that there were a limited number of people in proximity of the crossing, there is a significant urban population immediately to the northwest of the crossing who can access the crossing via the footpath which runs under the A13. Any users approaching the crossing from this location would have to undertake the full 900m diversion to arrive at the southern side of the railway. As the Ramblers point out, those seeking a short walk over the marshes are likely to be inconvenienced by an increase in journey times of around 40 minutes for a 'there and back' walk, particularly if they are time limited in any way.
- 5.26.57 In addition, those users such as Mr Glombek who park in the housing to the north west of the crossing and walk to the marshes via E33 will also be inconvenienced by the proposal. In order to arrive at the residual part of FP EX/279/136 on the south side of the railway, such users will be required to undertake a circuitous and lengthy alternative journey. For anyone approaching the crossing from the northwest and seeking to travel south, the proposed alternative would be inconvenient.
- 5.26.58 The proposal would require users to cross Pitsea Hall Lane twice; once to the north of Pitsea Hall CCTV crossing to reach the footway on the east side of the lane, and then to re-cross the lane to the south of the crossing to connect with the proposed footpath through Cromwell Manor. Network Rail contend that tactile paving and dropped kerbs will provide an improvement for pedestrians currently crossing Pitsea Hall Lane north of the CCTV crossing. However, it is highly unlikely that tactile paving and dropped kerbs will assist users in being able to determine whether it is safe to cross from the west side of the lane to the east at the southern road crossing due to the blind bend on which the proposed footpath would commence.
- 5.26.59 Whilst those users crossing from the east to the west would have a good view of traffic approaching from the north and from the south, those users crossing west to east would have limited visibility of traffic approaching from the south due to the curve in the road. The RSA noted the prevalence of HGVs travelling at speed along this road; to require pedestrians to step

into a road without being able to determine beforehand whether it would be safe to do so renders this proposal unsuitable as a diversion.

- 5.26.60 The requirement for users to cross Pitsea Hall Lane from a position where the user cannot determine whether a vehicle is approaching from the user's right would place the users at significant risk which is unlikely to be overcome by detailed design. To improve sighting at this location would require vegetation management and landscaping of areas outwith the area shown on the Order limit plans.
- 5.26.61 The Equality and Diversity Overview report rating for E22 was green and no DIA was carried out. The increased distance a user would have to travel over the proposed diversion might be an issue for some people, but the inconvenience and risk to user safety arising from the proposal would impact equally on all groups.
- 5.26.62 Taking all these matters into account and weighing the impact upon those likely to use the crossing in the balance against the matters in favour of closing the crossing, I find that the proposed alternative route would not be suitable, convenient or safe for current users of E33.

### **Overall conclusion**

- 5.26.63 Taking account of all the above and all other matters raised in relation to E33 Motorbike, I conclude that the Secretary of State should not include E33 in the Order as the proposed route would not provide existing users of the crossing with a suitable or convenient alternative.

## 5.27 **E35 Cranes No.1**

### **Description of the crossing**

- 5.27.1 The footpath crossing is located to the south-east of Cressing station on the Witham - Braintree branch railway line and is a passive level crossing where users are required to make their own decision as to whether it is safe to cross the railway. The branch railway consists of one line of rails and a service is operated to link Braintree with the main line at Witham; the maximum line speed for passenger trains is 50mph.
- 5.27.2 Footpath EX/74/14 commences to the west of Stubble's Farm on Mill Lane and runs in a generally south-westerly direction over pasture to the branch railway line. The footpath crosses the railway by means of stiles in the railway boundary fence. Footpath EX/74/14 then continues in a generally south-westerly direction to the White Notley parish boundary at the River Brain. The footpath then continues (as FP EX/120/7) in a generally south-westerly direction to Witham Road.
- 5.27.3 The area surrounding the crossing is predominantly agricultural; the land to the north-east of the crossing is pasture for horses, whereas the land to the south-west of the crossing forms part of The Notleys golf course.
- 5.27.4 The ALCRM score for this crossing is C7 with 44 scheduled passenger trains per day running over a period of 19 hours per day. This is a passive level crossing at the decision point there are signs advising users to stop, look and listen for approaching trains prior to making a judgement as to whether it is safe to proceed.
- 5.27.5 A 9-day camera census conducted between 9 July 2016 and 17 July 2016 showed 16 adult pedestrians using the crossing, none of whom were considered to be vulnerable users; there has been no recorded misuse of this crossing. The measured sighting distances in all directions is such that visible warning of an approaching train exceeds the minimum sighting distance required.

### **Description of the proposal**

- 5.27.6 It is proposed to divert FP EX/74/14 slightly to the south to use an existing underpass. The underpass currently provides access for users of the golf course to proceed between the parts of the course separated by the railway. The underpass is narrow (1.1m in width) and has restricted headroom (1.75m) and as the ground slopes east - west, the least headroom is at its northern entrance.
- 5.27.7 A 2m wide unsurfaced footpath will be provided on either side of the underpass to preserve continuity along the footpath. The railway crossing infrastructure at E35 would be removed and the railway boundary fence secured to prevent trespass.

## **The Case for Network Rail**

- 5.27.8 The underpass is a suitable and convenient alternative to the existing crossing. Although narrow and with restricted height, the underpass is only 10m in length, is straight and has good sightlines throughout. It is considered that shared use of the underpass by golfers and pedestrians using the footpath would be self-enforcing and potential conflicts between users would be avoided. It is noted that concerns have been raised regarding water standing at the southern end of the underpass but works to rectify or improve the flow of water through the underpass can be investigated further with the body responsible for the underpass at the detailed design stage.
- 5.27.9 The gradient over the existing approach to the crossing to be approximately 6% whereas the gradient of the proposed diversion route is approximately 7%. Although the gradient of the existing and proposed routes is greater than the ideal slope of 5%, they are less than the maximum slope generally applied for protected users. To the north-east of the railway some re-profiling may be needed to provide an even walking surface; the need for such works can be considered at the detailed design stage.
- 5.27.10 A DIA scoping exercise noted that due to issues with accessibility at the current crossing (notably the presence of stiles and long approaches across farmland) it is considered that there would be no reduction in pedestrian accessibility arising from the proposed diversion. A DIA was not considered necessary for this crossing.
- 5.27.11 It is not thought that the diversion would have any significant impacts upon the nature of the route currently used by pedestrians; the proposed alternative route is only marginally longer than the route proposed for closure.

## **The Case of the Objector who did not appear at the inquiry**

### **Mr Richard Simpson (OBJ 168)**

- 5.27.12 Sight lines at the existing crossing are good and with only one slow train per hour on this branch line, the crossing is reasonably safe to use. The proposed alternative route is unsuitable as the south-western end of the underpass regularly floods due to it being at a lower level than the adjacent golf course and the nearby drains are all too easily blocked.

## **The Case for the Objector who did appear at the inquiry**

### **The Ramblers (OBJ 148)<sup>189</sup>**

- 5.27.13 Mr Evans considers that the proposed alternative route is substantially less satisfactory than the current route as the underpass is used by golfers and golf buggies to pass from the western side of the course to the eastern side.

---

<sup>189</sup> OBJ 148 W-026 Mr Evans

There is a potential for conflict between users. The restricted width and height of the underpass do not conform to the minimum guidelines found in the DMRB which recommends that shared use subways should be 4m wide and 2.3m high. The restricted height of the underpass will require anyone over 5'9" to duck when passing through.

- 5.27.14 The south western end of the underpass is the low point of the surrounding land which is prone to waterlogging; at present none of the existing route becomes waterlogged or subject to floods. What is required is an alternative route which will be suitable all year round. No explanation has been forthcoming as to what causes the drainage issues nor who would be responsible for maintaining the underpass to allow for continued use in the future.
- 5.27.15 Although it was asserted by Network Rail that there could be an engineered solution to the problem of waterlogging, no survey or other documentary evidence was provided to demonstrate the feasibility of removing waterlogging at the south western end of the underpass. Furthermore, the convenience of the route would be reduced by pedestrians having to share use of the underpass with golfers and their buggies. It is considered that the underpass does not provide a suitable and convenient alternative to the use of Cranes No. 1.

### **Inspector's Conclusions**

- 5.27.16 I made an unaccompanied site visit to E35 on 23 August 2017 and a further unaccompanied inspection on 12 March 2019. I was able to cross the railway via E35 and to walk the proposed alternative apart from that section which crosses the boundary between the golf course and the pasture to the north of the railway. When I first visited the site, the boundary fence at this point was obscured by vegetation; at the date of my second site visit, the ground over which the proposed route would run from the northern end of the underpass had been cleared and it was possible to view the gradient of the proposed route land at this point.

### **SOM4(a) The likely impacts on landowners, 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**

- 5.27.17 The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.
- 5.27.18 There may be some impact upon The Notleys golf club of the proposed use by the public of the underpass in that there is a potential for shared use of a confined space to be problematic. However, no objections or representations were made by the golf club regarding the proposal which leads me to conclude that the proposed shared use is not considered to be of concern.

5.27.19 Whilst there was some debate between the parties regarding waterlogging in the vicinity of the southern entrance to the underpass and about the suitability of the gradient to the north of the underpass, these do not appear to be impacts which could not be dealt with through detailed design.

**SOM4(b) Impacts on other users**

5.27.20 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

5.27.21 The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

5.27.22 There is no indication the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.27.23 Cranes No. 1 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts upon the landscape, agricultural land and forestry**

5.27.24 E35 is located between a golf course and pasture for horses. As the proposed route would run through the same pasture field as the current path, there would be no adverse impact upon agricultural land.

5.27.25 The proposed approach to the southern end of the underpass already exists and although the creation of a suitable path between FP EX/74/14 and the northern end of the underpass will require the removal of some vegetation, there is no indication that this discrete area contains any species of environmental concern. I conclude that there would be little or no appreciable impact upon the landscape.

**SOM4(g) Any other environmental impacts including noise and health**

5.27.26 There is no indication that any impacts of these kinds would result from the proposed diversion.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

5.27.27 The main issue between the parties related to the drainage of the land at the southern end of the underpass. There was discussion at the inquiry as to who would be responsible for continued maintenance as Network Rail, the golf club and the highway authority all had an interest in the structure

and its surroundings. The topography of the area generally slopes east – west towards the River Brain. Network Rail consider that the issue of waterlogging can be addressed through detailed design. There are drainage ditches to the south of the underpass and an engineered solution to channel water away from the underpass to local drainage channels is a matter that can be considered at the detailed design stage.

- 5.27.28 Whilst there exists a potential for conflict between footpath users and users of the golf course, the underpass is quite short at 10m and from either end it is possible to see through it. Anyone wishing to pass through it will be able to see whether the underpass is occupied and would only have to wait a few seconds before using it if it were. I do not consider that this limited waiting period would be a significant hindrance for either golfers or the public whether as individuals or in groups.
- 5.27.29 The restricted headroom within the underpass at its northern end will be an inconvenience for some users, particularly those over 5'9". However, the restricted height at this location is limited to the northern end of the underpass and I do not consider that this limitation to be so significant that it would dissuade users from using the footpath.
- 5.27.30 The Equality and Diversity Overview report rating for E35 was green and no DIA was carried out. There would be a small increase in overall distance a user would have to travel arising from the diversion, but it is not of such magnitude that would create problems for any group. Taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary and the isolated, rural location of the crossing, there should be no disproportionality introduced by the proposed diversion.

### **Overall Conclusion**

- 5.27.31 Considering all the above, and all other matters raised in relation to E35, I conclude that the Secretary of State should include E35 within the order as the proposed alternative provides existing users of the crossing with a suitable and convenient alternative route.



## 5.28 **E36 Cranes No. 2**

### **Description of the crossing**

- 5.28.1 Footpath EX/120/8 commences on Pole Lane and runs in a generally north-easterly direction crossing the River Brain and the railway before connecting with FP EX/74/11 at the Cressing parish boundary. Footpath EX/74/11 then runs in a generally north-easterly direction terminating on Witham Road. The area surrounding the crossing is predominantly arable agricultural land and FP EX/120/8 is an unsurfaced field edge route on both sides of the railway.
- 5.28.2 E36 is a passive level crossing with stiles in the railway boundary fence and steps which lead the user to the track. At the decision point there are signs advising users to stop, look and listen for approaching trains prior to making a judgement as to whether it is safe to proceed. The crossing is on the Witham - Braintree branch line. The railway consists of one line of rails and a service is operated to link Braintree with the main line at Witham; the maximum line speed for passenger trains is 50mph.
- 5.28.3 The ALCRM score for this crossing is C7 and two incidents of misuse have been recorded at this crossing, one in May 2015 and one in June 2015. The 9-day camera census of July 2016 showed 3 adult pedestrians using the crossing none of whom were considered to be vulnerable users. The measured sighting distances in all directions is such that the visible warning of an approaching train exceeds the minimum sighting distance required.

### **Description of the proposal**

- 5.28.4 The proposal would extinguish existing public rights of way over the crossing and those parts of FP EX/74/11 (approximately 230m) and FP EX/120/8 (approximately 400m) which lead to and from it to prevent the creation of culs-de-sac at the railway boundary.
- 5.28.5 Users of FP EX/120/8 would be diverted southeast along FPs EX/120/21 and EX/120/10 where FP EX/120/10 passes under the railway by means of an underbridge. Users would then continue along FP EX/120/10 and join either FP EX/74/12 or FP EX/74/28 in order to re-connect with FP EX/74/11.
- 5.28.6 Crossing infrastructure would be removed, and fencing installed to prevent trespass on the railway along with waymarking of the new route as required.

### **The Case for Network Rail**

- 5.28.7 The current crossing provides a broadly north-east to south-west link in the local network which is broadly duplicated by FP EX/120/10 which runs in a similar direction further to the south, but which utilises an underbridge to cross the railway.
- 5.28.8 A DIA scoping exercise noted that due to issues with accessibility at the current crossing (notably the presence of stiles and long approaches across

farmland) it is considered that there would be no reduction in pedestrian accessibility arising from the proposed diversion. A DIA was not considered necessary for this crossing.

- 5.28.9 The proposed alternative routes would add approximately 640m to a journey, however the footpath over the crossing forms part of a route which is 3,300m in length; the impact on a user would be dependent upon their point of origin and intended destination. The connectivity of the rights of way network is maintained using the underbridge to the south of Cranes No. 2.

#### **The Case for the Objectors**

- 5.28.10 None of the objectors appeared at the public inquiry nor did they make any further submission beyond the initial objection.

#### **Cressing Parish Council (OBJ 131)**

- 5.28.11 The Parish Council objects to the proposed diversion because it will be taking away the public footpath and diverting the route into an area where there is no public footpath. The effect of the crossing closure will be to create dead ends at the point where the footpath would cross the railway. The path offers sweeping views of the river valley and is in proximity to one of the few remaining pieces of ancient woodland in the area. A high proportion of parish residents use the public rights of way network on a regular basis and residents should not be deprived of this pleasure.

#### **Daniel Cobden (OBJ 136)**

- 5.28.12 The safety record of the crossing is very good. If safety is an issue, Network Rail could install miniature flashing lights as has been done at other crossings. Network Rail say they will provide an alternative route; it is to be hoped that this will not be on local roads as White Notley has a problem with speeding vehicles.

#### **Richard Simpson (OBJ 168)**

- 5.28.13 Sight lines at the existing crossing are good and with only one slow train per hour on this branch line, the crossing is reasonably safe to use. The diversion involves a detour of about half a mile and takes out of use a footpath which gives views of different scenery from that provided by the farm track onto which the proposed route emerges. Walkers would no longer benefit from the woodland scenery to the west of the footpath as it runs down to the river from the railway and would remove the views from FP EX/74/11 as it runs down to the railway from the B1018.

#### **Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

5.28.14 In relation to landowners and occupiers, the proposed extinguishment of the public rights of way to the north and south of the crossing will remove a burden upon their landholding. The proposal will have no impact upon statutory undertakers or utility providers; there is no evidence that such undertakers or providers have infrastructure within the vicinity of the proposal.

**SOM4(b) Impacts on other users**

5.28.15 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

5.28.16 There is no indication the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.28.17 Cranes No. 2 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts upon the landscape, agricultural land and forestry**

5.28.18 It is unlikely that the proposal would have any negative impact upon agricultural interests; field edge paths would be extinguished and the alternative means of crossing the railway proposed already subsists as a PROW. Other than the removal of crossing infrastructure and the erection of new fencing at the railway boundary, there would be no adverse impact upon the landscape.

**SOM4(g) Other environmental impacts including noise and health**

5.28.19 There is no indication that any impacts of these kinds would result from the proposed diversion.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

5.28.20 Contrary to the suggestion by one of the objectors that the proposal will result in dead end paths being created at the railway, the intention is to extinguish parts of FPs EX/120/8 and EX/74/11 from the railway to their junctions with other public rights of way; culs-de-sac will not result from the proposal.

5.28.21 For those pedestrians approaching the crossing from the north wishing to walk south-west towards Pole Lane (and vice-versa) the proposal would require them to walk an additional 640m. The census of use suggested that the crossing is used on an occasional basis by a small number of

individuals. A journey between Witham Road and Pole Lane via the crossing currently requires users to undertake a journey of 1.8Km and it is likely that users who do make use of the crossing will have travelled additional distance to reach either of those starting points. An increase in journey distance of 650m is not considered unreasonable or excessive in such circumstances.

- 5.28.22 The underpass to the south east would provide a step and stile free means of negotiating the railway; the proposed alternative route is more accessible than the current crossing.
- 5.28.23 Footpaths EX/74/28 and EX/74/12 run over land with a similar topography to that crossed by FPs EX/120/8 and EX/74/11. Although some of the objectors consider there would be a loss of amenity arising from the proposal, the alternative route provides a similar experience regarding views from the path to the route which utilises the crossing.
- 5.28.24 The Equality and Diversity Overview report rating for E36 was green and no DIA was carried out. The increased distance a user would have to travel from the junction of FP EX/74/11 and EX/74/28 to the junction of FP EX/120/21 and FP EX/120/8 might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary, the steps up to the crossing and its isolated, rural location, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Overall Conclusion**

- 5.28.25 Considering all the above, and all other matters raised in relation to E36, I conclude that the Secretary of State should include E36 within the order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative route.

## 5.29 **E37 Essex Way**

### **Description of the Crossing**

- 5.29.1 Footpath EX/120/13 commences on Station Road, White Notley and runs in a generally south-easterly then north-easterly direction crossing the Witham to Braintree branch line. Once over the railway, the footpath continues in a generally north easterly direction to its junction with FP EX/74/37 at the parish boundary. Footpath EX/74/37 then runs through a small belt of woodland and terminates on Witham Road (B1018) opposite Crossing Temple.
- 5.29.2 E37 is approached from the south via an unsurfaced field edge path and from the north by an unsurfaced cross-field path running over an arable field. To the south of the crossing and running parallel to the railway is the River Brain. Where the footpath turns north-easterly away from the river it rises up a moderate incline to the railway. There are stiles in the railway boundary fence and decking furniture between the rails to enable users to cross safely.
- 5.29.3 E37 is a passive railway crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises one line of rails and carries passenger trains between Braintree and Witham at speeds of up to 50mph. The ALCRM score for this crossing is C8. A 9-day camera census undertaken in July 2016 recorded 42 adult pedestrians using the crossing, 4 of whom were elderly with the busiest day being Thursday 14 July when 16 adults used it<sup>190</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse at this crossing. There is no proposal to double track this railway.

### **Description of the proposal**

- 5.29.4 It is proposed to close E37 to all users, extinguishing the public rights of way over the crossing and that part of FP EX/120/13 from the point where it turns north away from the river to the Crossing parish boundary and its junction with FP EX/74/37.
- 5.29.5 It is proposed to create new footpaths that take users to an existing underbridge to the southeast of the current level crossing. These new paths would be a mixture of field boundary and cross field paths. Current users approaching E37 from the south would be diverted along a 2m wide unsurfaced footpath parallel to the river before crossing a small area of woodland and then across an arable field before crossing the railway via an existing underpass to the south east of E37. Users would then continue north-west via a proposed footpath along an existing access track, crossing paddocks as a field margin path before running in the margin of the arable field currently crossed by FP EX/120/13 to connect to existing FP EX/74/37. The total additional distance users would be required to undertake is 420m.

---

<sup>190</sup> NR25 3267-LON-E37 p 6

## **The Case for Network Rail**

- 5.29.6 Feedback from consultation and the camera census suggests that the crossing is used by a moderate number of people to access the wider footpath network. Connectivity within the rights of way network is maintained via the use of the underpass.
- 5.29.7 The Environment Agency flood map shows the majority of the proposed route including the underpass to be in a flood zone 1 which is described as a low risk of flooding. The proposed section of the footpath adjacent to the River Brain connects to FP EX/120/13 and would run within flood zones 2 and 3 as does the unaffected section of FP EX/120/13. It is not considered that the proposed footpath is more prone to flooding than the existing footpath.
- 5.29.8 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of E37 and the routes leading to and from it.
- 5.29.9 An alternative suggested by an objector to route the proposed footpath parallel to the south side of the railway was not progressed due to concerns that users would mistake the private Philpot crossing (located between E37 and the underbridge) for an official means of crossing the railway with resulting problems of trespass onto the line. It was considered that the cross-field path proposed was sufficiently direct and that users would not be tempted to access Philpot's crossing from it, in contrast to a route running parallel to the railway.
- 5.29.10 Concerns were raised by both Mr Philpot and the Ramblers as to flooding at the underpass. Ms Tilbrook set out in her evidence that the majority of the underpass was shown on the Environment Agency flood map as being in flood zone 1 (low risk) and that no concerns had been raised by ECC in this regard. Both Mr Kenning and Ms Tilbrook were confident that any issues with drainage (or flooding) would be able to be addressed during detailed design; the natural gradient of the land was such that suitable drainage solution at the underpass was possible.
- 5.29.11 The concerns raised by Mr Evans regarding flooding on the new section of footpath running alongside the River Brain were addressed by reference to the Environment Agency flood maps submitted with Mr Evans' rebuttal proof<sup>191</sup>. Ms Tilbrook highlighted that FP EX/120/13 is already situated within that flood zone: the new PROW is not, therefore, introducing an issue (or constraint) which does not already exist on the route that is being used today. If any issues were to arise with surface water on the footpath, they could be addressed in detailed design.
- 5.29.12 Ms Tilbrook was confident that a feasible solution could be delivered – noting that ECC would have to be satisfied that the route was suitable. She also stressed that she was speaking from an experienced point of view,

---

<sup>191</sup> OBJ 148 R4

having implemented and introduced footpaths in flood zones, and adjacent to rivers, and in agricultural areas with watercourses previously. Having regard to Ms Tilbrook's experience, the evidence she gave around flood mapping data (and what can be taken from it), taken in the overall context of the work done by her team in appraising the proposed routes during development of the Order, NR submits that the Secretary of State may have no qualms in accepting Ms Tilbrook's evidence that a suitable and convenient replacement, can and will be provided here.

5.29.13 Mr Philpot also raised a concern about fencing, given the proximity of the underpass to his paddocks with horses and foals. Both Mr Kenning and Ms Tilbrook confirmed that this would be a matter to be discussed further with the landowner (along with the Highway Authority) as part of detailed design. Similarly, Ms Tilbrook confirmed that there would need to be ongoing engagement regarding any drainage proposals.

5.29.14 Mr Philpot has also suggested an alternative route for the section of footpath to the north of the underpass, which would place the new PROW on the western, as opposed to eastern, side of a small watercourse. Whilst Network Rail maintains that the route it has proposed would provide a suitable and convenient replacement for existing users, for the purposes of s.5(6) of the 1992 Act, it has confirmed, in its response to Mr Philpot's consultation, that it would not object to that alternative proposal if the Secretary of State was minded to amend the Order as requested by Mr Philpot.

5.29.15 Network Rail maintains that the Order may properly be confirmed.

### **The Case for the objectors who did not appear at the inquiry**

#### **Daniel Cobden (OBJ 136)**

5.29.16 The safety record of the crossing is very good. If safety is an issue, Network Rail could install miniature flashing lights as has been done at other crossings. Network Rail say they will provide an alternative route; it is to be hoped that this will not be on local roads as White Notley has a problem with speeding vehicles.

#### **Richard Simpson (OBJ 168)**

5.29.17 Network Rail make a pretence at wanting to close crossings on safety grounds whereas the line in question is a single-track branch line with one train per hour in each direction. Sight lines at the existing crossing are good; by no stretch of the imagination can the crossing be considered dangerous. Crossing the line at E37 is infinitely safer than crossing any road.

5.29.18 There is a considerable length of diversion required here just to reach the underpass before turning north west to head towards Cressing Temple. The main objection to this diversion is that the crossing does not merit closure on safety grounds.

## **The Case of the Objectors who did appear at the inquiry**

### **Stuart Philpot on behalf of S J R Farming Ltd (OBJ 053)**

- 5.29.19 The proposed cross-field path will disrupt the cropping programme on the farm; the loss of crop production due to the new footpath running cross-field will be ongoing as will the need to maintain the footpath throughout the year.
- 5.29.20 A better solution would be for the proposed footpath to run parallel to the railway on its southern side; the gates at Philpot's crossing can be secured with padlocks to prevent trespass onto the railway. The consultation on possible alternative routes has been poor and the suggested alternative appears non-negotiable. Despite numerous meetings and suggestions being put forward, SJR Farming has not received any benefit or comfort from Network Rail.
- 5.29.21 The proposed route on the east of the drain goes through pony paddocks which will lead to disruption and poses a risk to horses kept on that land. In addition, the underpass regularly floods and will require drainage to take surface water away from the path and provide a dry walkway. Furthermore, fencing will be required to keep livestock and walkers separate which needs to be substantial and rot proof to prevent substantial renewal costs arising in subsequent years.
- 5.29.22 If the closure of E37 were to happen the proposed footpath on the eastern side of the ditch to the north of the underpass should run on the western side of the ditch<sup>192</sup>. This would remove the footpath from the access track and the pony paddocks and remove the adverse impact on security for property and animals. The alternative path would also run on the margins of existing woodland and would provide some interest for walkers. A small bridge would be required to carry the footpath over the ditch; this would be in addition to the provision of a suitable and effective drainage scheme in the vicinity of the underbridge.
- 5.29.23 If the proposed diversion were to happen, it is requested that the Secretary of State gives consideration to the request that the new path should be in the woodland fringe on the west side of the ditch.

### **The Ramblers (OBJ 148)<sup>193</sup>**

- 5.29.24 The proposed alternative route for E37 is not suitable, primarily because it will be prone to flooding, both at the underpass and on the stretch of new footpath running alongside the river to the south of the crossing. In addition, there is a risk of the river altering its course and taking the path away. The proposed route along the river was "damp, soggy and difficult" according to Mr Evans, and is not suitable land on which to permanently place a footpath.

---

<sup>192</sup> NR 196

<sup>193</sup> OBJ 148 W-027 Mr Evans



- 5.29.25 The Ramblers are concerned here with surface water flooding, as opposed to river flooding. Ms Tilbrook has not provided sufficient evidence to demonstrate that surface water flooding will not be an issue. In terms of the underpass, Mr Kenning assured the inquiry, that it was Network Rail's understanding that standing water could be prevented, and that in terms of water flowing downhill, this should not need an engineering solution. However, this has certainly not been proven, and there is insufficient evidence before the Inspector to allow him to make a recommendation on whether the route will be suitable.
- 5.29.26 Again, Ms Tilbrook emphasised that if, at detailed design, there was a need for surfacing work to address flooding concerns, this could be done at that stage. However, the Inspector noted that the design freeze does not indicate that any work is needed in this regard. Indeed, the design freeze map for this crossing fails to even show the presence of a watercourse to the north. From this, the Inspector cannot be confident that Network Rail has properly assessed the feasibility of its proposals.
- 5.29.27 In terms of access to the underpass, again Network Rail failed to provide the necessary details. There is a clear height difference that will need to be surmounted. Ms Tilbrook indicated, during examination-in-chief, that steps might be required, along with some regrading. Nothing of the sort is indicated on the design freeze plans.
- 5.29.28 Nor do the Ramblers consider that the quality of the walking experience – in terms of scenic views – is comparable to the existing route. In terms of scenic quality, Mr Evans gave evidence that the views simply do not compare to the existing route. He explained that users have "a beautiful view across the river and farm to Notley" on the existing footpath.
- 5.29.29 In summary, there are insufficient details to properly assess the suitability of the alternative route but, on the basis of the current proposals, the Ramblers do not consider the route to be adequate.
- 5.29.30 It is notable that E37 is a crossing for which the sightlines are "way over" the minimum requirements and there have been no incidents of misuse. Mr Fisk accepted in cross-examination that MSL could work and there appear to be no specific plans to increase line speeds through this crossing in the near future. There is no need to close this level crossing.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.29.31 In relation to the landowners, tenants and occupiers of the farmland the creation of the cross-field route to the south of the underpass will have the impact described by Mr Philpot. However, the negative impact upon this field will be offset to some extent by the extinguishment of the current

cross-field route to the north of E37 which Mr Philpot currently maintains. Both that part of FP EX/120/13 to the north of the crossing and the proposed alternative are approximately 330m in length. It is acknowledged that diverting the footpath from one field to another may have implications for the management of that field.

5.29.32 The proposed alternative route to the north of the underpass would also impact upon Mr Philpot's horse paddocks and the access track leading to the underpass. Mr Philpot has concerns about the security of his horses and pedestrians inadvertently following the access track to the industrial premises and barns at Cressing Farm. A minor amendment to the line of the path has been proposed by Mr Philpot which would address his concerns.

5.29.33 There was discussion between the parties with regard to the nature of fencing and the requirement for a drainage scheme in and around the underpass. There do not appear to be impacts in this respect which could not be dealt with through detailed design and compensation.

#### **SOM4(b) Impacts on other users**

5.29.34 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.29.35 The proposal would have no impact upon flood risk although the proposed footpath north of the railway would lie in the floodplain of the watercourse adjacent to it, and that part of the proposed path adjacent to the River Brain would lie within flood zones 2 and 3 as does the residual part of FP EX/120/13. Adjacent to the river, the proposed footpath would be at no greater or lesser risk of being flooded than the unaffected section of FP EX/120/13.

5.29.36 The point made by the Ramblers is that E37 and the existing footpath has none of these limitations being on elevated and rising ground which is outwith the flood zones of the relevant watercourses.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.29.37 E37 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4 (f) Impacts upon the landscape, agricultural land and forestry**

5.29.38 The impacts upon agricultural land are noted above; there is no forestry land affected by the proposal. Other than the removal of crossing infrastructure and the erection of new fencing at the railway boundary, there would be no adverse impact upon the landscape.

### **SOM4(g) Other environmental impacts including noise and health**

5.29.39 There is no indication that any impacts of these kinds would result from the proposed diversion.

### **SOM4(h)The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

5.29.40 The main issues arising related to the drainage, risk of the alternative path being flooded, the introduction of stepped access and the length of the diversion. The issue of the removal and prevention of standing water at the underpass and the provision of a drainage scheme to channel water from the drainage ditch through or under the underpass is a matter that can be addressed through detailed design and in consultation with the landowner and the Highway Authority.

5.29.41 In cross-examination it was accepted by Network Rail that in order to overcome the difference in height between the underpass and the field to the south of the railway through which the footpath would run, steps might be required along with re-profiling of the embankment.

5.29.42 No indication was given as to the number of steps required, although having visited the site, they are likely to be few. A DIA was not conducted in relation to E37 due to the location and accessibility of the existing footpath crossing. The requirement for steps to be provided has not therefore been considered under the DIA. Given where the steps are likely to be required, the numbers of people who might subsequently find the proposed route more difficult to use due to the steps is likely to be at a low level, however the introduction of steps in the new footpath would not be ideal and may inconvenience some users.

5.29.43 The proposed route would be more likely to be subject to surface water or river flooding than the existing path. That part of FP EX/120/13 proposed for extinguishment is located on rising and elevated ground which will remain dry at those times when due to adverse weather conditions, the proposed alternative path would be at risk of flooding or being flooded. The substitution of a path on elevated ground away from the flood plain for a path adjacent to the river and within its immediate flood plain introduces potential restrictions on use of the alternative path which are not present on the current path.

5.29.44 Taking all of the above into account, and weighing the proposed alternatives against the existing route, I find there are issues with access on the proposed alternative which render it unsuitable as an alternative to the existing crossing; the proposed route would be prone to flooding which the existing route is not and the requirement for stepped access may preclude use by those with impaired mobility.

5.29.45 The Equality and Diversity Overview report rating for E37 was green and no DIA was carried out. Given that the proposed alternative route is likely to require the introduction of stepped access, there are implications on use of

the proposed alternative route by those whose mobility may be impacted by steps. Although the steps are likely to be few and would be around the half-way point of the diversion, no consideration as to the potential impact of the steps has been given. I consider there is a likelihood that the PSED would not be met if this crossing were recommended for closure and that adds weight to my recommendation not to include this crossing in the Order.

### **Overall conclusion**

5.29.46 Taking account of all the above and all other matters raised in relation to E37, I conclude that the Secretary of State should not include E37 in the Order as the proposed route would not provide existing users of the crossing with a suitable and convenient alternative.

## 5.30 **E38 Battlesbridge**

### **Description of the crossing**

- 5.30.1 Footpath EX/229/23 commences on Hawk Lane, Battlesbridge and runs in a generally south easterly direction running through woodland and the margins of fields to cross the Wickford to Southminster branch line via E38. Having crossed the railway, the footpath runs parallel to the railway for approximately 160m passing under the A1245 and A130 before turning north then west to the Runwell parish boundary. From here FP EX/231/8 continues west terminating at Runwell Road. There are no other public rights of way which link to these footpaths and together they provide an east-west link between the settlements of Battlesbridge and Runwell of approximately 2.1Km.
- 5.30.2 The footpath is unsurfaced throughout its length. To the east of the A1245 the footpath runs over mixed-use land passing through a small paddock to the rear of the Hawk Inn, through a small belt of woodland crossing a second stile and on the margins of land used for pony grazing. Between Hawk Lane and the railway there are three stiles at field boundaries. To the west of the A130 the footpath runs through predominantly cultivated arable farmland.
- 5.30.3 There is no defined footpath leading to the crossing from either side of the railway; to the east the path passes through a pedestrian gate and along a grass path to a flight of 16 steps up to the crossing. On the western side of the crossing there are six steps down from the crossing point due to the height difference of the land.
- 5.30.4 E38 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises a single line of rails and trains are worked in both directions over the crossing. The railway carries passenger trains at line speeds of up to 50mph. The ALCRM score for this crossing is D8. A 9-day camera census undertaken in July 2016 recorded no use of the crossing; a similar survey conducted in 2015 had recorded 2 users, neither of which were considered to be vulnerable. Sightlines in all directions are sufficient to meet industry standards.

### **Description of the proposal**

- 5.30.5 It is proposed to close E38 to all users, extinguishing the PROW over the crossing. In addition, it is proposed to extinguish approximately 40m of FP EX/229/23 to the south-east of the railway.
- 5.30.6 It is proposed to divert users of E38 onto the existing A1245 overbridge. This would be accessed via steps at each side of the road bridge on its embankments. There would be a short footpath route over the bridge leading to another set of steps on the other side of the road bridge.
- 5.30.7 North of the railway, users of FP EX/229/23 will be diverted north via a new 2m wide unsurfaced footpath and then rise up the overbridge embankment via steps to the grass verge at the side of the A1245. Adjustments to the

Vehicle Restraint System (VRS) on the A1245 would be created at both ends of the bridge. Users would then walk over the hardened verge of the road bridge to cross the railway to walk in the grass verge on the south side of the overbridge before descending the south-eastern embankment via steps. Users would then re-connect with FP EX/229/23 via a new 2m wide unsurfaced footpath.

### **The Case for Network Rail**

- 5.30.8 The proposal has changed from that originally identified by Network Rail in 2015. The original suggestion had been to create a new footpath on the north side of the railway from the level crossing to Battlesbridge station. That proposal was not proceeded with due to the large amount of vegetation clearance that would be required to achieve a clear footpath and the difficulties of accessing Hawk Hill.
- 5.30.9 There is no formal pathway to the level crossing on either side of the railway and the existing crossing is accessed via a grassy path which leads to steps up to the crossing itself. Network Rail considers the diversionary route, including steps, is suitable and convenient for the current users of the crossing. For this reason, the additional land take required for a ramp would not be justified.
- 5.30.10 The level crossing is located on a long-distance footpath which provides the only means of access to the level crossing from the east and west. Pedestrians using the crossing from FPs EX/231/8 and EX/229/23 already have to walk approximately 2,100m between Hawk Lane and Runwell Road and the amenity value in this area is already affected by the presence of the railway, the A130 and A1245. The proposed route provides access for pedestrians wishing to walk west to east between Runwell and Battlesbridge as does the original route. The total additional length of the diversionary route is approximately 375m with approximately 160m being on the A1245. The route is longer than existing, however, as it provides leisure walking the additional distance is considered acceptable.
- 5.30.11 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route. The proposed route was subject to a Stage 1 RSA which did not raise any issues with the use of the A1245 as part of the diversion. ATC data<sup>194</sup> was collected on the A1245, which showed an average 2-way daily traffic flow of 17,502 vehicles and 85<sup>th</sup> percentile speed of vehicles of 57.5mph where the posted limit is 60mph.
- 5.30.12 The A1245 has been built to meet current highway alignment standards and therefore the verge is widened in this location to provide forward visibility. This provides pedestrians with a clearance approximately 5m to the edge of the running lane of traffic. The proposals were considered appropriate when the traffic data was considered on this section of the route.

---

<sup>194</sup> NR32/2 tab 1 p 12

- 5.30.13 The detailed consideration of the amendments of the VRS along the A1245 are to be undertaken at a later detailed design stage. This will be in accordance with DMRB TD19/06 Requirements for Road Restraint Systems where Chapter 3 Criteria and Guidance for the Provision of Permanent Safety Barriers covers modifications to VRS. This document provides guidance on the measures needed to provide gaps in barriers for access, the lengths of transitional barrier overlaps on approach and departure from the bridge. Further details will be provided for ECC's consideration.
- 5.30.14 The overbridge would be accessed by steps on either side. This is likely to involve 5 flights of 12 steps on the south side, and the same number of flights, but with slightly fewer steps, on the north side, in order to accommodate the substantive level difference. The steps provided would comply with the guidance in *Inclusive Mobility*, although the exact details (for example, material and facings) would be a matter for detailed design, and subject to the approval of ECC.
- 5.30.15 In order to accommodate the proposed diversion over the A1245 overbridge, it will be necessary to create gaps, with appropriate overlaps, in the existing VRS on the A1245 overbridge. Ms Tilbrook explained that the VRS is there to protect the occupants of a vehicle from a hazard and, in some cases, the hazard from a potential vehicle incursion. The level of containment required, and length of VRS required, would come out of a RRRAP<sup>195</sup> assessment<sup>196</sup>.
- 5.30.16 In terms of the current arrangement, there is a very high level of containment where the overbridge passes over the railway, and an H2 (a higher level) containment on the approaches to the parapet. There is then a section of a normal level of containment continuing on from the H2 containment. Network Rail will be required to leave a minimum distance from the bridge before it creates the gaps in the VRS (to ensure that the VRS continues to operate as a stand-alone system) and that an overlap length of barrier will be provided such as that shown in figure 3.11 of TD 19/06<sup>197</sup>. It was Ms Tilbrook's evidence that TD 19/06 does not require specific allowance to be made between the two sections of barrier for both the 'working width' of the barrier (i.e. how far the barrier will deflect if struck) plus a clear walking area for pedestrians as contended for by the objectors.
- 5.30.17 Whilst there may have to be some works to the embankment to ensure that the amended system can be accommodated, and that it might be necessary to consider some slight alteration to the alignment of the VRS; these were matters for detailed design and would require the sign-off of ECC both in terms of the proposed amendment of highway structure, and also on the stage 2 RSA that would have to be undertaken.

---

<sup>195</sup> Road Restraint Risk Assessment Process

<sup>196</sup> In common with Mr Corbyn's assessment in OBJ/195/W5

<sup>197</sup> NR 134

- 5.30.18 In the event, Ms Tilbrook's evidence on these matters was not seriously challenged. On technical matters, Mr Corbyn did not take issue with Ms Tilbrook's evidence that an engineering solution could be found for the proposed amendments. The suggestion made by ECC in closing that there may be some doubt as to whether the necessary amendments to the VRS can be achieved, was therefore somewhat surprising.
- 5.30.19 It was also clear from Mr Corbyn's evidence that he was not suggesting any fundamental flaw in the work that Mott MacDonald had undertaken. Mr Russell also did not call into question the deliverability of the proposed amendments at this location: his focus was more on the need to provide an appropriate 'separation distance'.
- 5.30.20 Mr Russell's attempt to import such a requirement by reference to the guidance referred to in TD 19/06 at para 3.36 was tenuous at best as para 3.36 is expressly concerned with locations where there is a "defined movement of equestrians/farm animals along the verge"<sup>198</sup> That is, quite simply, not the situation here.
- 5.30.21 It is submitted that Ms Tilbrook is an experienced highways engineer and had provided detailed, and careful evidence, as to what needs to be provided, and is confident that it can be provided. Any changes will, in any event, have to be signed off by ECC as Highway Authority – and subject to a stage 2 RSA. There need be no concern, therefore as to deliverability of suitable amendments to the VRS to facilitate the proposed diversion over this overbridge.
- 5.30.22 In reality, the dispute between the parties really centred on (1) perceptions of safety and (2) the suitability and convenience of the proposed diversion route having regard, in particular, to the steps necessary to reach the overbridge.
- 5.30.23 In respect of safety, as Ms Tilbrook stressed in her evidence, there is no objective safety concern with the proposed diversion route. Pedestrians will only be using the overbridge for a short distance and a correspondingly short time (she suggested less than 3 minutes). Mr Lee and Mrs Evans take a different view.
- 5.30.24 Similarly, in respect of the steps, both Ms Tilbrook and Mr Kenning stressed that the acceptability, or otherwise, of those steps (and potential accessibility constraints they present) has to be considered in the context of how the crossing is being used today, and the accessibility constraints which exist today. It forms part of a long-distance walk – with the need to access the crossing via steps today. The evidence is to the effect that this route is little used.
- 5.30.25 In that context, Network Rail submits that the provision of steps to access the overbridge is neither likely to preclude the use of the diversionary route by individuals who may be using the crossing today – i.e. the existing users

---

<sup>198</sup> NR 134



– nor to deter them from using it. Again, Mr Lee and Mrs Evans take a different view – although Mr Lee fairly accepted in cross examination that the level crossing will not be accessible to all today.

5.30.26 What has to be considered is whether, overall, the diversionary route is suitable and convenient for existing users assessed objectively. Network Rail maintains, for the reasons given by Ms Tilbrook and Mr Kenning that the Secretary of State can properly be satisfied that the proposed diversion route for E38 is a suitable and convenient replacement for existing users.

### **The Case for the Objectors**

#### **The Ramblers (OBJ 148)<sup>199</sup>**

5.30.27 Whilst key information on the details of the proposals for E38 is still lacking, it is readily apparent that the alternative route is not suitable and convenient. The diversion requires users to navigate a lengthy and convoluted detour, including the need to surmount and demount 120 steps and walk alongside the busy A1245.

5.30.28 Firstly, regarding steps, the Ramblers consider that the accessibility constraints on the alternative route are considerable and will put off users from walking it. The lack of, and inaccuracy of, details on the proposals for steps at E38 was astounding. The design guide and design freeze simply stated “*Proposed 2m wide steps Type S2 up the embankment*”, with Type S2 being referred to as “*Timber board steps*” on p. 32 of the design guide<sup>200</sup>. Ms Tilbrook, however, made clear that the material that they are fabricated from would need to be to the satisfaction of the Highway Authority who may want concrete material; her evidence was also that the steps would probably be 1.2m wide, not 2m wide.

5.30.29 Moreover, in order to assess the impact that these steps will have on users it is vital to know how many steps there would be, yet Mr Kenning was unable to answer this point. Ms Tilbrook later explained that it is likely to require around five flights of 12 steps, with four intermediate landings, on one side and five flights of 11 steps and four intermediate landings on the other. She indicated there would need to be a change of direction as there would be a limit on the number of steps that could continue in a straight line. Ms Tilbrook emphasised that these steps would be designed to the standards of inclusive mobility, but there is no legal guarantee from the Order that this will be the case.

5.30.30 Clearly, the imposition of 120 steps onto a diversion will severely restrict accessibility for use by the general public, particularly those who are elderly or have any mobility constraints. As Mrs Evans stated, “there’s just no comparison in terms of convenience” between the current number of steps on the current approach to the crossing and what is being proposed.

---

<sup>199</sup> OBJ 148 W-032 Mrs Evans; OBJ 148 W-019 Mr Russell

<sup>200</sup> NR12 p 32

- 5.30.31 It was apparent from Mr Kenning's answers that Network Rail has failed to appreciate these accessibility constraints. At one point, he noted that the existing route requires considerable cross-field walking, indicating that those who are able to navigate this will be able to deal with the steps - a concerning assumption to make on accessibility on the ROW network.
- 5.30.32 Secondly, the Ramblers have safety concerns regarding this route. There was considerable discussion at the inquiry on what Network Rail is proposing to do to the VRS. Pedestrian users will be routed to walk in between the VRS and moving traffic. Again, details on how the VRS will be amended are lacking, which prevents a conclusion being made as to the suitability of the alternative. Mr Russell provided further clarification of his position on this crossing once he understood what was really being proposed<sup>201</sup>. He explained that he had assumed from the design guide materials, which stated simply "Existing vehicle crash barrier to be amended" that Network Rail would be providing some form of protection between pedestrians and traffic - whether that was to ensure a physical barrier in the way of the VRS itself (with pedestrians on one side and vehicles on another) or to have sufficient separation distance between cars and people (even if both were on one side of the VRS). Mr Russell fairly assumed that there would be such a guarantee of protection here.
- 5.30.33 Network Rail's written response to Technical Note 02<sup>202</sup> suggests that TA90/05 is not relevant to the introduction of pedestrians to a local A road. The Ramblers disagree; DMRB is applicable to local roads that have similar characteristics as the trunk road network and/or at the discretion of the Highway Authority. Notably, ECC, as the relevant Highway Authority, are following DMRB guidance (TD19) in their assessment of this proposal, indicating that they consider DMRB to be the appropriate design standard for this road.
- 5.30.34 The Ramblers consider that whilst the details of the barrier, and its exact location, is a matter for a Stage 2 RSA, there needs to be an assessment at Stage 1 that a safe and suitable solution can be achieved.
- 5.30.35 Ultimately, it is clear that the alternative route is not safe enough from a user perspective. Mr Corbyn, on behalf of ECC, stated on multiple occasions that he "wouldn't choose this as a walking route" noting that a motorist would not expect to see somebody walking along these verges<sup>203</sup>. Mr Lee stated: "as a parent, would I take my son walking along [the] proposed section like that? Not unless I have to"<sup>204</sup>. And Mrs Evans, when asked if she would choose to walk this route answered "no I would not"<sup>205</sup>. These are three able-bodied witnesses saying that they simply would not use the route.

---

<sup>201</sup> OBJ 148 inquiry document 1

<sup>202</sup> NR 160

<sup>203</sup> Mr Corbyn EIC

<sup>204</sup> Mr Lee in cross examination

<sup>205</sup> Mrs Evans EIC

5.30.36 The footpath traversing E38 is a valued east-west connection point in this area of Essex. Network Rail's proposals will effectively result in a loss of this connection point and a loss to the ROW network.

5.30.37 There is no need to close this crossing – it is not high risk, the sightings are way over the minimums, there have been no reported incidents and according to Mr Fisk there are no plans to doubletrack the line any time soon, nor to increase the line speed. In terms of safety, users would be less safe on the diversion than on the existing route and there has been no cost-benefit analysis evidence put forward to show why – having factored in the costs of amending the VRS and implementing the 120 steps – this diversion would be a good use of public funds.

**Essex County Council (OBJ 195)<sup>206</sup>**

5.30.38 Mr Lee raised three main objections about the proposal; amenity, inconvenience and safety. There is an effective loss of amenity from the substantially longer proposed diversion route; the proposed alternative route is seven times as long as the existing crossing. It also relies on steps in two locations to climb/descend steep embankments to the A1245 thus limiting the accessibility of the route for some users; Network Rail have not conducted a DIA into this proposed closure.

5.30.39 Network Rail's proposed alternative route requires an amendment to the A1245 VRS; details of the replacement barrier have not been supplied by Network Rail. Pedestrians would remain vulnerable behind any amended barrier alongside a road with a 60mph speed limit in the event of a vehicle collision with the barrier. In addition, the section of proposed alternative route using the current road bridge offers no safety facilities for pedestrians.

5.30.40 The particular issues between the parties during the inquiry related to road safety as the diversionary route would take users along the A1245 and the inconvenience presented by the need to ascend a steep embankment to get there. The A1245 is an incredibly busy road with two-way traffic flow of 17,502 vehicles per day. In comparison, Mr Kenning confirmed in cross examination that 3 trains would pass over the crossing in an average 2-hour period.

5.30.41 Ms Tilbrook agreed with ECC that the possibility of a vehicle leaving the carriageway is the reason the VRS was present along the side of the bridge and that the feasibility of amending the VRS to allow a gap for access to users was fundamental to implementation of this route. Significant technical discussions were aired during the inquiry in relation to the VRS. Put simply, to enable a gap for pedestrians there needs to be two rows of barriers that overlap. The DMRB document TD19/06 specifies, among other things, mechanisms for calculating the width of the gap, known as the working width, and the length of overlap.

---

<sup>206</sup> OBJ 195 W3/1 Mr lee; OBJ 195 W/5 Mr Corbyn/ Mr Seager

- 5.30.42 Mr Corbyn's evidence, supported by TD10/067, was that pedestrians (referred to in the document as non-motorised users 'NMUs') should be located beyond the working width of the safety barrier. Mr Corbyn was not able to conclude whether or not the required width could be achieved, particularly in the knowledge of physical site constraints created by the utilities buried in the bridge decking and the finite space by virtue of the bridge structure.
- 5.30.43 In cross examination, Ms Tilbrook agreed that these issues had not been bottomed out, and that they would be for detailed design stage. ECC submit that whilst these matters can be dealt with in detailed design, it is so fundamental to the feasibility of this route that this level of detail could have, and should have, been completed already. The Inspector and the Secretary of State do not have information about whether or not the necessary amendments to the VRS can be achieved.
- 5.30.44 In addition, if a suitable amendment to the VRS could be achieved, pedestrians would still be diverted adjacent to a 60mph road which had not been designed to facilitate pedestrian users. Users of vehicles are not expecting to see pedestrians at the roadside, and pedestrians will be in an environment not designed to be used by them. Mr Lee's evidence was that he would not feel safe negotiating the proposed route.
- 5.30.45 To reach the road bridge, users would be required to ascend and descend an embankment. During the course of the inquiry it was made known that there would be no less than 60 steps on each side of the bridge to negotiate as part of this diversion. Mr Lee's evidence was that on hearing this news, his "jaw dropped" as this number of steps was never in his contemplation. Mr Lee's evidence was that the original route crossed relatively flat ground and was far more accessible than the alternative.
- 5.30.46 In cross examination, Ms Tilbrook accepted that 60 steps would require more effort on the part of the user than was required to scale the existing steps to cross the railway.
- 5.30.47 In sum, ECC submit that this route is not suitable and convenient. With regards to paragraph 8 of the note submitted by Network Rail on the meaning of 'suitable and convenient'<sup>207</sup>, the proposed alternative route is not safe nor accessible and in respect of the definitions provided in para 4 of that note, this route cannot be convenient in that it would clearly involve more than a little trouble or effort to negotiate two flights of 60 steps.

**C J Clark and J N Clark (OBJ 206) (did not appear at the inquiry)**

- 5.30.48 The land owned was retained when other property at Hawk Hill was sold. The land is not currently farmed or let for grazing but has been retained as an investment as there have been suggestions that Battlesbridge could be an area for future residential expansion. The objection is made due to concerns that works proposed on the land and rights of access to the land

---

<sup>207</sup> NR 135

granted by the Order could complicate future negotiations if permission is eventually granted for residential use.

**Malcolm Lees on behalf of the Open Spaces Society (OBJ 207) (did not appear at the inquiry)**

- 5.30.49 The noise from the traffic on the A1245 is intolerable and path users should not have to climb up the road embankments to the bridge in order to cross the railway. No-one is likely to want to put themselves at risk on the verge of the A1245 as they would endure more pollution and noise than is found at the crossing.
- 5.30.50 There are 3 trains per hour on this railway, giving a user 20 minutes in which to cross. Even increasing this to 4 trains an hour would still leave 15 minutes in which to cross the railway. This appears to be an exercise in saving Network Rail the cost of inspection and maintenance of the crossing; the level of risk to pedestrians of crossing the railway should not be transferred to local authorities in the way Network Rail propose.

**Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

- 5.30.51 There will be some negative impact upon landowners and occupiers to the north east and south east of the railway where the proposed new footpath would run. The land affected by the proposal is primarily grassland, scrub and trees with two sections of new footpath in the margins of fields adjacent to the A1245 embankments.
- 5.30.52 There was considerable discussion regarding the use of the A1245 overbridge as part of the proposal in relation to the proposed alteration of the existing VRS and the implications this would have for the safety of the public when using the overbridge as part of the proposed diversion. The issues arising relate to the feasibility and deliverability of those modifications and the implications for the safety of the public of traversing the overbridge.
- 5.30.53 There do not appear to be impacts in this respect which could not be addressed through detailed design and compensation.

**SOM4(b) Impacts on other users**

- 5.30.54 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.30.55 No evidence was submitted which suggested that flooding was an issue at this location or that the proposal would have any adverse impact upon flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.30.56 E38 is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts upon the landscape, agricultural land and forestry**

- 5.30.57 The impacts upon agricultural land are noted above; there is no forestry land affected by the proposal. The construction of two flights of steps on the north-east and south-east embankments of the A1245 will have an impact on the landscape, although the scrubby woodland through which the proposed footpath would pass is likely to provide screening. However, the steps are unlikely to have a significant negative impact upon a landscape which is already compromised by the A130 and A1245 overbridges and the roads themselves.
- 5.30.58 Other than the installation of the steps and the removal of crossing infrastructure and the erection of new fencing at the railway boundary, there would be no adverse impact upon the landscape.

**SOM4(g) Other environmental impacts including noise and health**

- 5.30.59 The objectors expressed concerns at having to walk adjacent to a 60mph road and to be exposed to traffic noise and fumes from passing vehicles. This was seen to be in direct contrast to the existing crossing of the railway, which save for the occasional passing train, was free of noise and pollution. The length of the path in the verge and hard standing on the overbridge would be approximately 125m in length; whilst the verges taper away from the north and south abutments of the bridge, they vary between 3 and 5m in width. Although path users may be exposed to fumes and noise, they are likely to be at some distance from the carriageway and that exposure is likely to be of limited duration.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

- 5.30.60 Footpath EX/229/23 is part of a link footpath between the settlements of Battlesbridge and Runwell. The camera survey shows that the footpath is not heavily used although it was relatively easy to find and negotiate during my site visit. The available evidence suggests that the principal use of the crossing and the paths which serve it was for leisure use by members of the public as part of a link between two villages. The proposal would increase the length of the footpath by approximately 375m. On a path used for leisure purposes and which is just over 2Km in length such an increase is unlikely to represent a significant inconvenience.

- 5.30.61 The main issues arising, however, related to the safety of the proposed alternative and the steps which would be required to raise the footpath up the embankments and on to the A1245.
- 5.30.62 As pointed out by Network Rail, there are three phases to the VRS on the A1245 overbridge with that section directly above the railway being the highest level of containment. The VRS is there to protect vehicle users from hazards (the road embankments) and to protect hazards (the railway) from vehicles. It is within the lowest level containment section that modification of the VRS would have to take place to allow pedestrians to pass between the restraint system whilst at the same time maintaining the function of the VRS and to protect vehicles from hazards present in the environment surrounding the road.
- 5.30.63 No evidence was provided by Network Rail to demonstrate that the VRS could be modified to allow pedestrians through it with a suitable gap and with sufficient overlap in line with DMRB guidelines to ensure that the VRS would continue to function correctly, although consideration had been given to this issue. Network Rail's view was that such matters could be addressed through detailed design.
- 5.30.64 At this stage, approval for the diversion is sought on an 'in principle' basis; although no detailed designs have been produced to demonstrate that it would be possible to amend the VRS in the way which would be required, ECC, as Highway Authority, will be the final arbiter of any scheme proposed through detailed design. The crossing would not be able to be closed until such time that the Highway Authority certified that the new route was of the appropriate standard.
- 5.30.65 Where concerns remain regarding safety of pedestrians is on the parapet of the overbridge itself. There is no proposal to provide a separate VRS on the bridge as a secondary measure to protect pedestrians from vehicles which may leave the carriageway. The VRS on the overbridge is designed to prevent vehicles from either running down the embankment or from falling onto the railway; no provision appears to have been made during construction for pedestrians traversing the bridge.
- 5.30.66 In such circumstances, once a pedestrian has stepped from between the amended VRS, there would be no protection offered from vehicles which may leave the carriageway. An element of risk to pedestrians is therefore introduced by this proposal.
- 5.30.67 Whilst Network Rail considered this risk to be minimal as pedestrians would only be walking over the bridge for approximately 3 minutes; that still equates to approximately 18 vehicles<sup>208</sup> passing a pedestrian during that time period. In comparison, a user will require no more than 10 seconds to cross the railway with a train passing over E38 approximately once every 40 minutes. It is understandable why the perception amongst the Ramblers

---

<sup>208</sup> Assuming half the daily flow will be travelling southbound adjacent to the proposed route

and ECC is that users would be placed at greater risk using the proposed route than the existing crossing.

- 5.30.68 A DIA was not carried out in relation to this crossing. The Equality and Diversity Overview report rating for E38 was green and concluded that the existing footpath was inaccessible due to the lack of a formal pathway, no recorded use during the census period, and that the diversion would not reduce accessibility. The existing steps up to the crossing limit accessibility and may preclude those who would find stepped access difficult.
- 5.30.69 Those who currently use E38 as part of a journey between Battlesbridge and Runwell have to negotiate 16 steps on the south side of the railway and 6 steps on the north. However, a world of difference between being required to negotiate 22 steps to cross the railway and being required to negotiate 120 steps on the alternative route to arrive at the same point. For even an able-bodied user the quantity of steps that would be introduced into the footpath by this diversion would be highly inconvenient, even if those steps are designed in line with the provisions of *Inclusive Mobility*. I consider there is a likelihood that the PSED would not be met if this crossing were recommended for closure.
- 5.30.70 There are unresolved issues in relation to the potential adjustment of the VRS that would require further exploration through detailed design and consultation with the Highway Authority, and there is an issue with pedestrians being exposed to a greater risk in traversing the road overbridge than they currently face when crossing the railway via E38. No proposals have been put forward to mitigate that risk; exposure to a greater safety risk on the overbridge means that the alternative route is not suitable.
- 5.30.71 Whilst such matters might be addressed by detailed design, there is a significant issue with the number of steps required to raise the footpath to the level of the carriageway which will inconvenience current users of the crossing.
- 5.30.72 Taking all of the above into account and weighing these matters in the balance against the conditions present at the crossing, I find there are issues regarding accessibility on the proposed diversion. The quantity of steps required are likely to limit use by some users who would not find the existing steps at the crossing an issue. Although diversion of the footpath would remove the risk of an accident from the crossing itself, pedestrians will be afforded little or no protection from risk on the overbridge.

### **Overall conclusion**

- 5.30.73 Taking account of all the above and all other matters raised in relation to E38, I conclude that the Secretary of State should not include E38 in the Order as the proposed route would not provide existing users of the crossing with a suitable or convenient alternative.



## 5.31 **E41 Paget**

### **Description of the crossing**

- 5.31.1 Paget crossing is located within Wivenhoe and provides access across the Colchester to Clacton railway and between residential areas lying to the north and south of the railway. The passive crossing links the two parts of Paget Road bisected by the railway. The area surrounding the crossing is predominantly residential.
- 5.31.2 The crossing comprises a surfaced path from the northern part of Paget Road with a pedestrian gate at the railway boundary. The crossing itself is boarded between the rails to enable pedestrians to cross safely and benefits from marker lights within the boards to illuminate the crossing during hours of darkness. The access on the south side is a ramped surfaced path with a pedestrian gate at the railway boundary.
- 5.31.3 Paget is a passive footpath level crossing where pedestrians are required to stop, look and listen for approaching trains. The railway comprises two lines of rails with a line speed of 50 mph. The ALCRM score for this crossing is C4. A 9-day camera census carried out in July 2016 recorded 1,182 pedestrian users, of whom 60 were unaccompanied children, 17 were elderly and one was impaired; four bicycles were also recorded as being walked over the crossing.
- 5.31.4 An assessment of the crossing carried out in March 2017<sup>209</sup> showed that sightlines at the crossing of approaching trains was insufficient in all directions. Insufficient sighting is mitigated by whistle boards and by a 24-hour audible alarm (Covtec) at the crossing warning of the approach of a train.
- 5.31.5 The whistle board and Covtec mitigation does not provide sufficient warning to pedestrians of the approach on the down line of a train running at 50mph. Further mitigation is provided by a TSR on the down line of 20mph.

### **Description of the proposal**

- 5.31.6 It is proposed to close E41 to all users, and to extinguish any PROW over the crossing which may be in existence.
- 5.31.7 The proposed diversion would involve users of the level crossing, on the south side of the railway, being diverted along Paget Road mainly using the carriageway, and then along Anglesea Road (a privately maintained public road) using the carriageway heading north, before crossing the railway via an existing road bridge. Users would continue north along Anglesea Road to connect to Queen's Road. Footways are available on Queen's Road although a handrail would be provided due to the steepness of the gradient (around 1:7) and a paved area would be reprofiled to provide a flatter rest area with

---

<sup>209</sup> NR 163

a bench. The current level crossing access on the south side of the railway would be removed.

- 5.31.8 On the north side of the railway a new 1.5m wide stoned surface footpath link within Network Rail land would be created west from the level crossing to Phillip Road. This new footpath in Network Rail land would require a footbridge less than 5m long to cross an existing watercourse and the footpath would be fenced off with 2.0m high steel palisade fencing. Users would continue west to High Street and then use the existing road bridge to cross the railway.
- 5.31.9 Widening of some of the existing footway on High Street bridge is proposed<sup>210</sup>. Level crossing infrastructure would be removed and 2.0m high steel palisade fencing installed to the north, and 1.8m high chain link fencing installed to the south of the level crossing, to prevent trespass onto the railway. New wayfinding signage would be provided.
- 5.31.10 The diversion via Anglesea Road would add a maximum 330m to the route. The diversion via Phillip Road, avoiding the Queen's Road gradient, would add a maximum 488m to the route.

### **The Case for Network Rail**

- 5.31.11 Feedback from public consultation and usage data demonstrates that the crossing is used on a regular basis by a high number of people resident on either side of the crossing to access services in the northern part of the village and for access to amenities and the wider footpath network that lies to south of Wivenhoe. There is no doubt that E41 is a well-used crossing which is highly valued by those who use it, and by the wider community.
- 5.31.12 E41 is also, however, one of the higher risk crossings in this Order; it is the 25<sup>th</sup> riskiest crossing on the Anglia region. Sighting is poor on the down line and the physical constraints on the site are such that it is not possible to locate a whistle board to provide adequate warning to pedestrians without line speed being restricted to 20mph<sup>211</sup>; the TSR increases journey times in the down direction by 40 seconds<sup>212</sup>.
- 5.31.13 Network Rail does not pursue this Order on the basis of the 'risk' posed at a specific crossing per se, or the constraint that a particular crossing poses on the current operational efficiency (or resilience) of the railway, or a future enhancement scheme. However, this level crossing is a tangible example of the conflict that can arise between the need to ensure that those seeking to use a level crossing have the time to cross safely, and the Licence conditions under which NR must operate.
- 5.31.14 Similarly, reducing the line speed to 35mph as suggested by Mr Kay to address safety concerns would be in conflict with the Licence conditions. It

---

<sup>210</sup> NR 146

<sup>211</sup> NR 163 in response to OBJ 185/4 on whistle board policy.

<sup>212</sup> NR28/1 2.4.18

would not, in any event, address the issue with insufficient sighting which has led to a TSR needing to be imposed<sup>213</sup>.

- 5.31.15 Mr Kay took issue with the 'need' for the 20mph speed restriction in this location. He queried, in particular, the justification for the traverse time used to calculate required sighting having been increased to allow for vulnerable users; the way in which the available sighting has been assessed; and the requirement for a whistle board on the down line in addition to that on the up. Contrary to Mr Kay's submission, the allowance for vulnerable users is entirely in accordance with NR's standards and reflects the assessment of the crossing by the relevant person<sup>214</sup>.
- 5.31.16 As regards assessment of available sighting, as Mr Fisk explained the LCM is instructed to make the assessment from the 'decision point', 2m from the nearest running rail. At that point, the whole of the front of the train must remain visible. At E41, the front of the train is partly hidden by the Anglesea Road bridge and is only in full view once it has cleared the bridge. Whilst it may well be the case that an individual standing 1.8m from the line (rather than the 2m decision point) may not lose sight of the train, or that parts of some trains may be visible at all times, the LCM responsible for this crossing has assessed, in accordance with the training and requirements set down in NR's standards, that there is insufficient sighting to comply with industry standards. There is simply no basis for displacing that structured expert judgment with the assessment undertaken by Mr Kay.
- 5.31.17 In respect of the whistle board, Mr Fisk explained that the 20mph speed restriction on this line is in place to ensure that the whistle board provides sufficient warning for users. The whistle board in this case provides very little more than the 11.42s it takes for a user to cross the level crossing. It is not possible to locate the whistle board further away from the crossing, due to the constraints of the retaining wall between the level crossing and the station. The whistle board is required on this line because Network Rail could not provide a warning by way of whistle board in the up direction and not also in the down direction. The provision of whistle boards in both directions where a whistle board is required is an ORR requirement.
- 5.31.18 There are physical constraints at the site such that a bridge would not be possible; a ramped accessible bridge would dominate adjacent properties and give rise to overlooking problems. MSLs would have to be tied into the signalling system and allowances made for stopping and non-stopping trains to allow uniform warnings to be given at the crossing.
- 5.31.19 Network Rail's proposal is to extinguish such PROW as may exist over the crossing, to dedicate a new footpath within NR land and over the existing private road known as Phillip Road on the northern side of the railway. Users of the level crossing will instead cross the railway at Anglesea Road overbridge to the east, or High Street bridge to the west. Some widening

---

<sup>213</sup> Mr Fisk oral evidence that available sighting distance is calculated from the point that the front of the train is in continuous view at the 2m decision point

<sup>214</sup> NR31/2 tab 3

works are proposed to the existing footway over High Street bridge although it will not be possible to achieve a 1.8m width along the full length of the bridge on both sides. Both the creation of the new PROW and works to the existing highway will need to be undertaken to the reasonable satisfaction of ECC before the crossing can be closed.

- 5.31.20 More detail as to what is, indicatively, proposed in respect of those works to the High Street is set out in an email chain between Mott MacDonald, CBC and ECC<sup>215</sup>. In short, it is proposed to build out the footways along either side of the bridge to 1.8m. This is not achievable along the whole length of the bridge to allow for bus turning movements but would significantly improve what is there at present. The existing 'give way' line, to the north of the bridge, will be moved further north just to the other side of the Phillip Road junction. The improved footway provision would give pedestrians the opportunity to see whether they could proceed south, and direct vehicles towards the centre of the road in the narrowed carriageway.
- 5.31.21 Ms Tilbrook acknowledged in cross-examination that the swept paths on the plan<sup>216</sup> demonstrated that there would not be room for a pedestrian to walk along the footway on the eastern side whilst a bus was turning, and that people would be expected to "self-regulate". However, as she explained, that is how the bridge operates at present: the works proposed would provide an improvement to that existing situation. She stressed that she was not relying on the fact that because the bridge was "operating okay" presently that that meant it was therefore acceptable. However, that is clearly a relevant, and material, consideration to take into account when assessing the proposed diversion route.
- 5.31.22 The RSA undertaken had not identified any safety concerns with use of High Street bridge. ATC data was collected on Anglesea Road between Brook Street and Queen's Road, which showed an average 2-way daily traffic flow of 291 vehicles and 85<sup>th</sup> percentile speed of vehicles of 13.4mph where the posted is 20mph<sup>217</sup>. The proposals were considered appropriate when the traffic data was considered on this section of the route.
- 5.31.23 Ms Tilbrook's evidence explained why, having regard to how traffic was using High Street (from site observation), the 20mph zone which commences to the north of High Street bridge, and traffic flow data provided by CBC, as well as the feasibility appraisal undertaken by Mott MacDonald, she was satisfied that a suitable route could be provided across the bridge. It had not been considered feasible to widen the footway on the east side of the bridge by modifying the bridge parapet and building out over Network Rail land as such works might compromise the bridge structure.
- 5.31.24 As regards the other parts of the proposed diversion route, Ms Tilbrook explained that each of the 3 alternative routes retained connectivity to

---

<sup>215</sup> NR32/4/3 appendix B and plans at NR/146

<sup>216</sup> NR 146 plan B

<sup>217</sup> NR32/1 tab 1 page 18

services and amenities on both sides of the railway. The additional link via the new footpath on Network Rail land, and Phillip Road, provides a route with a lesser gradient than Queen's Road, and reduces the diversion length for users wishing to access amenities to the west.

- 5.31.25 Measures to assist those using Queen's Road (a rest area and, as appropriate, handrails) have been included within the proposals, recognising the steeper gradient on this line of the route. The additional distances involved in the diversion routes, and the environments through which those routes passed, are not considered such as to deter people from using the routes – or to mean that they are not a suitable and convenient replacement for existing users. Network Rail also highlights that even those objecting to the Order volunteered, in evidence, that they are using such parts of those routes as exist today – at times, in preference to the level crossing; Ms Clarke for example used High Street to access the health centre and did not use the crossing after dark but went via Anglesea Road.
- 5.31.26 Network Rail maintains, however, that the Secretary of State may properly conclude that on an objective assessment of what is proposed in this location, that the proposed diversions would provide suitable and convenient replacements for existing users of the level crossing.
- 5.31.27 Ultimately, what falls for consideration in this inquiry is the principle of diverting users via High Street bridge (and Anglesea Road bridge to the west) via the new PROW proposed and use of existing highway. The details are, necessarily, a matter for detailed design – subject to certification by ECC. Network Rail is confident that a satisfactory scheme can be delivered here.
- 5.31.28 Others have expressed scepticism as to whether a satisfactory solution can in fact be delivered. There was, however, no evidence presented to the inquiry to demonstrate that it could not; a number of witnesses (who confirmed they did not have technical highways engineering backgrounds) expressed contrary views on the matter.
- 5.31.29 Further if the Order powers are granted, it is ultimately Network Rail who bears the risk of not being able to deliver a scheme to the satisfaction of the Highway Authority, as the crossing cannot be closed without highway authority approval. A Stage 2 RSA will be undertaken on the route using High Street and any issues will be addressed during detailed design.
- 5.31.30 Network Rail does not accept Mr Kay's assertion that the inquiry only proceeded on the basis that evidence on matters other than the alternative routes was not relevant but would be reported, and that Network Rail had adopted a 'perverse' interpretation of section 5 (6) of the 1992 Act that most of the evidence offered by objectors was legally irrelevant. Network Rail had put forward its position as to how the Order application fell to be determined but had not sought to restrict the scope of the inquiry - nor would it, in fact, have any power to do so. The Inspector, similarly, reiterated that it was neither his, nor Network Rail's intention, to stifle debate on the matters which parties considered should be taken into

account. The suggestion that parties have in any way been restricted in the nature of the case they wished to advance is wholly without merit.

- 5.31.31 Mr Kay also made a number of what can be characterised as unfortunately expressed comments about Network Rail, its personnel and contractors; those comments are wholly unjustified, in particular insofar as they call into question the professional competence of the individuals involved.
- 5.31.32 Nor are Mr Kay's criticisms of the "attitude" he says was displayed by Network Rail at consultation events accepted. In relation to the consultation process, Network Rail were seeking feedback on proposed alternatives.
- 5.31.33 Network Rail maintains that the Secretary of State may properly conclude, on the basis of the evidence submitted, that a suitable and convenient replacement for existing users will be provided. The Order may properly be confirmed without modification.

### **The Case of those Objectors who did not appear at the inquiry**

#### **Juanita Le Fevre (OBJ 002)**

- 5.31.34 The crossing at Paget has not experienced an accident in over 140 years and is flat and convenient. The alternative routes are unmade, uneven, very steep and very narrow as they follow the mediaeval street pattern. Paget crossing is used every day personally and is the main access to the station, buses and shops. Closing the crossing will have a negative impact upon quality of life.

#### **Mark Hanlon (OBJ 017)**

- 5.31.35 Objection is made to the proposed closure of three crossings in the Alresford area. Network Rail say that closing these crossings will save money and improve train times. It is unlikely that train times will improve as the crossings are close to stations where trains will be accelerating or decelerating. It is doubtful whether non-stopping trains would be able to go through the stations any faster if the crossings were not present. The proposed closures are nothing more than a cost cutting exercise.

#### **Janice Matthews (OBJ 024)**

- 5.31.36 Paget crossing is personally used on a daily basis as it provides access to Lower Wivenhoe. There is a good view of the track in either direction. The road bridge in High Street is a much more dangerous place as the pavement is very narrow and the buses pass very close to pedestrians. It is not believed that Paget is a dangerous crossing and it should not be closed.

#### **Jane Black (OBJ 025)**

- 5.31.37 Paget crossing is an important link for residents and has been in place since the railway was built. It has an excellent safety record.

### **Liz Taylor-Jones (OBJ 026)**

5.31.38 Paget Road crossing is used regularly by people from the many houses on the north and east side of the railway to get down to the river and the pubs and shops in old Wivenhoe. The closure would cut the eastern side of the town in half and force walkers to take a long way around involving climbing the steep hills in Queen's Road whichever way they walk. Taking the alternative route via Anglesea Road involves a very rough, stony road steeply up and then down again. Trains are not delayed at this location as the crossing is close to the station and trains are moving slowly on approach or departure. Visibility is reasonably clear in both directions.

### **Daryl Williamson (OBJ 027)**

5.31.39 The crossing is the only safe road traffic free pedestrian route from the housing estate built on the old shipyard to the only local supermarket. The proposed alternative exposes pedestrians to greater risk than that which exists at the rail crossing. Closing the crossing will have no effect in reducing unauthorised access to the tracks; the station is not manned late evenings and nights and provides unrestricted access to the rails.

5.31.40 The public have attempted to engage in consultation but have been ignored. At the consultation briefing in Colchester in June 2016 Network Rail were keen to advance its vision of the future where no level crossings obstructed a modernised railway. Network Rail were of the view that if Paget Road crossing was deemed to be dangerous it would be closed, so the current scheme provided an opportunity to look for a realistic low-cost alternative. The initial consultation process which has ignored the specific local information provided by users is flawed. Paget should not be closed.

### **Helen Currie (OBJ 028)**

5.31.41 Trains approaching Wivenhoe station are slowing down; they do not pose a danger to people using the crossing. The crossing is used personally, and the alternative would require use of the steep sections of Queen's Road or the steep and unmade Anglesea Road. There has never been a problem at Paget Road which provides a route to and from the river for residents.

### **Pat Marsden (OBJ 031)**

5.31.42 The Paget crossing has been well used since its creation in 1864 and there is no record of any accidents at the site. The proposal and the excessive use of train horns at present could be replaced with a much less anti-social alternative. The proposed detours are along the steep Queen's Road and the steep and unmade Anglesea Road which has no pavement. The bridge at High Street has very narrow footways which are overhung by buses turning out of Station Road. The additional path on the north side to Phillip Road makes no sense.

5.31.43 Objection is also made to the appalling increase in train horn noise which has deafened the town since Network Rail commenced its campaign to close

the crossing. These two events did not occur in isolation and inflicts a distressing amount of noise on residents outside of the NTQP.

**Jeremy Evans (OBJ 032)**

5.31.44 The crossing is a direct link between the two halves of Paget Road severed by the railway when it was constructed. The crossing is in constant use; the alternatives are both lengthy and demanding, being uphill and are unsuitable for those with impaired mobility.

5.31.45 There have been several recent high court cases in which Network Rail has been found to be at fault when people have been struck by trains at crossings. This has led to extreme risk-aversion whereby attempts are made to close as many crossings as possible despite crossings such as Paget not having a recorded incident in more than 150 years. The closure of the crossing will lead to a loss of amenity for the community.

**Sydney Bayley (OBJ 033)**

5.31.46 This is a perfectly safe crossing and there has been no accidents or fatalities at the crossing. It is a very convenient crossing when travelling from the north end of the town to the east side of Wivenhoe Quay. The proposed routes involve detours.

**Kevin Murray (OBJ 035)**

5.31.47 The crossing is used personally to get to the top end of the town on foot. There have been no incidents at the crossing; in contrast there have been two near misses with buses on the bridge at High Street.

5.31.48 The High Street bridge does not have a full width pavement on either side of the road. The pavement on the east side is particularly narrow and only wide enough for one pedestrian. The body of a bus exiting Station Road crosses the pavement as it turns; Mr Murray has nearly been hit by a bus on two occasions when using the eastern footway at the bridge.

**Maggie Bernstein (OBJ 036)**

5.31.49 There is no safety issue arising at the Paget Road crossing; it is personally used all the time to cross to the opposite side of the village. The alternative requires a long uphill detour which will prove difficult for the elderly in the winter.

**Pippa Allerton (OBJ 037)**

5.31.50 Closing this crossing would negatively impact a great number of local people who have been using the crossing without incident for many years.

**Prof Hugh Brogan (OBJ 038)**

5.31.51 Paget Road is used personally several times each week without incident. Closure would be greatly inconvenient. There is no safety case to be made



for closure as there have been no incidents at the crossing since it was opened.

**Julie Young (OBJ 039)**

5.31.52 The proposed alternative route onto Phillip Road is particularly ill conceived; a new health centre is being developed on the site and considerable extra footfall and vehicular movements are expected without adding to them.

**Gloria Brooke (OBJ 040)**

5.31.53 Paget Road crossing is personally used on a regular basis; it is convenient, safe and level. Anglesea Road is uneven; Ms Brooke has slipped on the gravel surface and injured her knees. Many elderly residents are likely to hesitate before using this alternative means of crossing the railway. The footway of High Street bridge is very narrow, and the road is very busy; there is only enough space for one pedestrian at any one time and for two persons to pass, one has to step into the busy roadway.

**Stan Cooper (OBJ 041)**

5.31.54 The closure of Paget crossing is strongly opposed.

**Clare Kendrick Robinson (OBJ 043)**

5.31.55 There has never been an incident at the crossing; it is not understood why the crossing is required to be closed.

**Rob Matthews (OBJ 045)**

5.31.56 The crossing provides an essential pedestrian route for journeys through this part of Wivenhoe. The crossing has been an established pedestrian route for a considerable time and is just as important to the history of the town as any of the buildings and enclosures through which it passes. Do not destroy this route for commercial expediency.

**Peter Hill (OBJ 046)**

5.31.57 Paget Road crossing is well used. It is one of only 5 ways for people to get from the top half of Wivenhoe to the older bottom half of town. The crossing is at the bottom of a steep valley, and so, if closed would mean a significant detour in either direction to use Anglesea Road bridge or via the High Street.

5.31.58 Anglesea Road is a privately maintained public road, steep and uneven whereas High Street bridge has only narrow footways on either side. The proposal for a new footpath to Phillip Road makes no sense at all. Anyone walking to the crossing from the north will find it quicker to go via Queen's Road despite the steep gradients to arrive at High Street. Phillip Road is a vehicular route to the new health centre which has no footways for pedestrians.

**Charmaine McKissock (OBJ 048)**

5.31.59 The crossing is well used and has an accident free record. Both 'alternative' routes are more likely to introduce a greater level of risk for users, given the steep gradients and uneven surfaces involved. Many people are unable to walk along Anglesea Road due to the large potholes in the unmade road. The alternatives will make this part of Wivenhoe more inaccessible for those who are not able bodied.

**Robert Needham (OBJ 049)**

5.31.60 Born and bred in Wivenhoe, Mr Needham has used the crossing countless times during his 75 years. The crossing has a good safety record; the proposed alternatives are neither convenient nor practical.

**Andy Fiore (OBJ 050)**

5.31.61 Network Rail admits that the proposed alternative route is physically hard going as it has proposed rest areas on Queen's Road which has a very steep incline. In its public consultations, Network Rail has repeatedly stated that it is not in its remit to discuss potential alternatives; this was nothing but a pretence at consultation. The new route to Phillip Road will open up access to the new NHS surgery, but it does not address the problems caused by the closure of the crossing. The level and frequency of train horn noise has increased recently following local objection to the proposed closure.

**George McKissock (OBJ 051)**

5.31.62 Paget is a popular and well-used crossing which has an excellent safety record. Both alternatives will increase risk to users, given the steep gradients and uneven surfaces involved. Closing the crossing would cut the lower part of the town in two making access to the business centre and the quayside much more difficult.

**Mark Halladay (OBJ 056)**

5.31.63 Paget is in the centre of Wivenhoe and provides easy access between the two halves of the lower town bisected by the railway. Trains run slowly over the crossing as it lies close to the station and the crossing has good visibility of oncoming trains.

5.31.64 The crossing adds significantly to the amenity and character of the lower town. Closure might provide Network Rail with a marginal reduction in arithmetic risk but would be a real loss for local people.

**Christine Thomas (OBJ 058)**

5.31.65 Paget is a well-used crossing and a vital part of the local community.

**Dr Chris Gibson (OBJ 060)**

- 5.31.66 Paget is used personally as part of a route between home and the local supermarket and other services within the town. The closure is unnecessary in relation to Network Rail's stated reasons and is unacceptable in respect of the impact it will have upon users, particularly the less able bodied.
- 5.31.67 The crossing has an excellent safety record with no accident or incident befalling users in the crossing's 150-year history. The proximity of Wivenhoe station precludes any significant increase in train speeds on this line.
- 5.31.68 Closure would require a substantial diversion on foot over either Anglesea Road or High Street road bridges. Anglesea Road has an uneven, unsealed surface which poses risks to those with restricted mobility. High Street bridge is risky; the eastern footway is exceptionally narrow and buses turning out of Station Road have to use all the carriageway width to make the turn, occasionally mounting the pavement when doing so. Pedestrian safety is likely to be compromised on either of the bridge crossings.
- 5.31.69 During six years of residence, the increase in the frequency and duration of train horns has been notable, particularly following the publication of Network Rail's proposals. It is difficult not to conclude that increasing use of the horn is anything other than an act of intimidation designed to 'persuade' residents not to object to the proposals.

**Richard Smith (OBJ 061)**

- 5.31.70 The proposed closure denies access to public rights of way and places pedestrians on dangerous and/or narrow busy roads. Excessive use of train horns is nothing but bullying of residents by Network Rail; the crossing could be adequately maintained for use with a little thought and effort.

**Richard Polom (OBJ 62)**

- 5.31.71 Paget provides a significant practical day to day facility for residents of Wivenhoe. The crossing is not dangerous and has been safely used by residents for many years.

**Helen Polom (OBJ 063)**

- 5.31.72 The crossing has been used personally for 30 years; there have been no accidents at the crossing in that time. There is less danger for the average use in crossing at Paget than there is in crossing the road. The proposed alternative would not appear to satisfy the PSED imposed by current legislation; people with disabilities would be prevented from reaching facilities in the town on foot due to obstacles on the alternative routes.

**Jane Hughes (OBJ 067)**

- 5.31.73 This crossing is used regularly and should not be closed.

**Mark Deal (OBJ 068)**

5.31.74 There is arguably a greater risk to pedestrians from walking along Anglesea Road and High Street where they will be forced to mix with vehicular traffic.

**Marika Footring (OBJ 072)**

5.31.75 Network Rail have conceded that Paget is not dangerous, and the proposed alternative pedestrian routes are unsuitable.

**Nick Tile (OBJ 073)**

5.31.76 Paget crossing provides a vital link to lower Wivenhoe and the amenities found around the Black Buoy, the sailing club and the businesses on the business park and the footpaths to the marshes. The crossing is safe; trains approach it at a sedate speed as the station is nearby. The approaches to the crossing are amid a typical part of the town which reinforces the impression that the town was once a working community with its history reflected by the old terrace cottages.

**Patricia Cosgrove (OBJ 075)**

5.31.77 The crossing is invaluable to the community and the alternative is a long walk uphill on an un-made road which is difficult and dangerous for the elderly and infirm. Using the alternative is more likely to cause injury. Closing the crossing would have a significant negative effect upon residents.

**Sue Minta (OBJ 076)**

5.31.78 Paget is in the centre of Wivenhoe and provides easy access between the two halves of the lower town bisected by the railway. Trains run slowly over the crossing as it lies close to the station and the crossing has good visibility of oncoming trains.

5.31.79 The crossing adds significantly to the amenity and character of the lower town. Closure might provide network rail with a marginal reduction in arithmetic risk but would be a real loss for local people.

**Kay Savory (OBJ 077)**

5.31.80 Paget crossing is not dangerous, with no accidents or incidents having been recorded. No viable alternatives have been put forward by Network Rail, especially for older members of the community who use the crossing to reach the opposite side of the town on a relatively level surface.

**Clara Dekker (OBJ 078)**

5.31.81 The alternative routes suggested are dangerous and difficult for elderly or disabled people. There have been no fatalities at Paget and trains are running at slow speeds when they cross Paget.

**Susan Kerr (OBJ 079)**

5.31.82 The crossing has been used many times over many years; there has been no accidents at the crossing. The crossing provides a link between the upper and lower parts of the town. Its closure would mean a longer and potentially more dangerous detour.

**Sally Crozier-Green (OBJ 082)**

5.31.83 Objects to the closure of E41.

**Lewis Footring (OBJ 088)**

5.31.84 Closing this crossing would be inconvenient to the fit and healthy. Those with prams and walking aids will be faced with very steep unmade roads and a 1-kilometre diversion to access many of the lower parts of the town.

**Sandra Welham (OBJ 089)**

5.31.85 The alternative routes proposed are completely unsuitable, one of them being along a privately-owned public road which is in a very bad state of repair. There are numerous deep ruts in the road and there is no footway meaning pedestrians would walk in the middle of the road.

**Peter Cook (OBJ 090)**

5.31.86 Paget is well-used as demonstrated by the survey. There is good vision of trains from either side of the crossing. None of the alternatives proposed provide the convenience currently enjoyed.

**R W Willis (OBJ 092)**

5.31.87 Paget is well used particularly when walking the dog. Alternative routes are less satisfactory due to the steep gradients and can present problems to persons who walk with the assistance of a stick.

**Mrs M Greenland (OBJ 093)**

5.31.88 In over 70 years, only one person has been injured at Paget crossing. The path is used to visit daughters and granddaughters. There is good vision and distance to see approaching trains. Paget is a popular crossing point used by many people each day who would have to make a long detour round, climbing the steep hill of Queen's Road which would be difficult for the mobility impaired and elderly.

**Peter Kay (OBJ 095)<sup>218</sup>**

5.31.89 Objection is made to the proposed closure of Paget crossing on the grounds that no rational case has been made for its closure.

---

<sup>218</sup> Mr Kay appeared at the inquiry as a representative of Wivenhoe Town Council

**Judith Poyser (OBJ 096)**

5.31.90 It is perfect nonsense to take away a safe route to local amenities and require users to negotiate High Street – a narrow road with two-way traffic and no footway and then negotiate a narrow road bridge with a very narrow footway which passing and turning buses regularly overhang. Anglesea Road is unmade, potholed with no footway and is subject to considerable motor traffic. Paget is safe with good sightlines; excessive use of train horns is a cynical ploy to wear down resistance to the proposals.

**Alejandra Diaz de Leon (OBJ 097)**

5.31.91 Objection is made to the proposed closure of Paget crossing; there has never been an accident there and the crossing is convenient.

**Bob Button (OBJ 106)**

5.31.92 No objection is made to the closure of Paget Road level crossing, but objection is made to the temporary closure of High Street which will prevent access to businesses along the High Street. Closure of the High Street is unnecessary as the works proposed by Network Rail relate to Phillip Road.

**Daphne Lawrence (OBJ 110)**

5.31.93 Mrs Lawrence requests that the pedestrian crossing at Paget's is retained as she uses the crossing frequently as part of her therapeutic walks around Wivenhoe.

**Clare Kane (OBJ 111)**

5.31.94 The crossing is well-used by walkers and runners and is a well-loved part of the Wivenhoe landscape that residents wish to retain. There is no need for it to be closed; it is not unsafe.

**T B Griggs (OBJ 112)**

5.31.95 It appears there is only one intended outcome of public consultation regarding Paget crossing and that is its closure. The crossing provides easy access to local amenities close to the village centre and quay for a large number of residents. Closure would make life more difficult for residents; it should remain open for safe and convenient movement around the town.

**Sally Breen (OBJ 114)**

5.31.96 Paget crossing has been used personally for nearly 40 years. The crossing is used frequently and there have been no incidents at the crossing. The crossing is used by parents taking their children to school and its closure would mean that parents would have to walk along unmade roads which have no safe area for children to walk on. Cars are parked on both sides of these roads and limit the visibility for drivers. The proposed alternatives are likely to create more risk for pedestrians than they currently face at the crossing.

**Christina Volkmann (OBJ 116)**

5.31.97 Resident in Wivenhoe for 7 years and has not heard of any incidents or accidents arising from use of Paget crossing. The crossing is a community asset facilitating pedestrian traffic away from roads with motorised vehicles. The steps taken by Network Rail to enhance safety features at the crossings are welcomed.

**Lesley Croxford (OBJ 121)**

5.31.98 As a resident of Paget Road for several years, the crossing is incredibly useful to get to other parts of the village without a considerably longer walk. The trains pass slowly on their way to and from the station and there is no danger of anyone being run down. Closing the crossing would make everyone's lives so much more difficult.

**Jean McCarthy (OBJ 122)**

5.31.99 Closure is opposed on the grounds that the crossing has a good safety record and the alternatives are long and have steep slopes which would be difficult for the elderly. The proposed rest area is likely to be on the existing island which has collapsible bollards to allow the emergency services access; the rest area will be very dangerous in consequence. It will also suffer from exhaust pollution from vehicles. It cannot be sited where it will block access to adjacent property.

**Jeanette Parsons (OBJ 135)**

5.31.100 Paget Road crossing has a good safety record with no incidents or accidents recorded there. Closure of the crossing will affect a lot of people and will split the village. There will be some who cannot climb the steep hills in Queen's Road or walk on the dangerous unmade road which is Anglesea Road with its potholes and poor lighting after dark. There are also many lorries which use Anglesea Road to access the Business Park.

**Dr J L Bartholomew (OBJ 149)**

5.31.101 Paget crossing is well used by residents, there is excellent visibility along the track in both directions and there has not been an injury to any person despite decades of use of the crossing. The crossing is vital for the fluidity of movement within the village and its closure would negatively impact many people in the lower end of the village. The proposed alternative, along the unpaved Anglesea Road is a third again as long as crossing at Paget Road and the top of Queens Road is very steep, making both routes difficult to negotiate.

**Susan Glasspool (OBJ 152)**

5.31.102 The railway cuts through the heart of old Wivenhoe and with only 2 road crossings – one narrow and the other on a stony unadopted road – E41 makes a safe and flat alternative which is used sensibly and is very popular with residents.

**Dr Christian De Cock (OBJ 154)**

5.31.103 As a resident adjacent to the crossing for 7 years he has not witnessed any accidents or incidents at the crossing. The crossing is a community asset which facilitates pedestrian traffic through Wivenhoe away from roads and vehicular traffic.

**BNP Paribas Real Estate on behalf of Royal Mail Group Limited (RMG) (OBJ 156)**

5.31.104 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.

5.31.105 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.

5.31.106 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Phillip Road, High Street, Station Road, Queen's Road, Valley Road and Paget Road.

**Sheila Foster (OBJ 160)**

5.31.107 A resident of Wivenhoe for 43 years who uses Paget crossing on a regular basis to get from Stanley Road to visit friends south of the railway, to visit the trading estate, to the sailing club and to the Quay. The crossing is easy to use, the trains are slow and there has always been plenty of time to cross the railway in safety even before the use of very loud train horns. There has never been an accident at the crossing and local children are taught to respect it and to use it safely.

5.31.108 The proposal to bridge a small stream and to provide a link to Phillip Road will not assist users in following the most direct route to facilities to the south of the railway. In an online consultation, 92% of respondents opposed the proposed closure, but Network Rail has not changed its approach which shows a frustrating disregard for the findings of the consultation.

**Daniel Stoker (OBJ 161)**

5.31.109 The crossing is not dangerous in practice and it provides a vital and more direct route between home and lower Wivenhoe, the waterfront, the Wivenhoe Trail and the Sailing Club. In more than two and a half years of using the crossing, it has never been found to be unsafe or dangerous.

**Dr Ben Gray (OBJ 163)**



5.31.110 The crossing is used frequently, there has never been an accident and it is used by many elderly people as Queen's Road has steep gradients either side of Paget Road; the crossing is essential for access around Wivenhoe for elderly residents. This important route should be kept open.

**Dominic Munro (OBJ 174)**

5.31.111 This crossing is used personally on a regular basis and is a much safer means of crossing the railway than at Anglesea Road, which is rough, unmade and with many potholes. The crossing feels safe to use, with reflective strips and adequate vision of oncoming trains. If Network Rail consider the crossing to be high risk, then MSLs could be installed as at other crossings.

5.31.112 The proposed rest area and bench on Queen's Road is likely to be sprayed with loose gravel kicked up by vehicles turning onto Valley Road and would put at risk anyone resting at the bench. The proposed bench – proposed as an alleviation measure for a longer route - is not justified and the safety risks to pedestrians far outweigh any benefits.

**Lyndall Rosewarne (OBJ 179)**

5.31.113 The crossing is not dangerous and is of great utility to the residents of Wivenhoe. There are no alternatives which adequately replace this right of way which pre-dates the railway and is part of Wivenhoe's heritage.

**Peter Bather (OBJ 183)**

5.31.114 The crossing is the most convenient and level access to the town for a large residential area. To use either of the alternatives proposed will require the elderly and the infirm to climb considerable inclines. One of the bridges suggested as an alternative is unmade with no pavements and is unsuitable for the elderly or the very young. There has never been an accident at this crossing; historically it is very safe.

5.31.115 Given that all trains stop at Wivenhoe, it is unlikely that more or faster trains could be run on this line even if the crossing were closed. The financial benefits to a railway company arising from closure are a drop in the ocean compared with recent expenditure at the crossing.

5.31.116 Paget Road pre-dates the railway, and the need to retain a foot crossing recognised by the Victorians is enhanced by more recent housing development and a growing local population.

**Sir Bernard Jenkin MP (OBJ 187)**

5.31.117 The uniqueness of this crossing in Essex has to be understood. There is a clear split made by the railway, through the heart of Wivenhoe. There are 5 methods by which people can travel between the two parts of the town; this is restrictive with a population of c7,000. Closure of the crossing

would enforce and underline the divide in the town and would go against the vast majority of public opinion.

5.31.118 This is a well-used crossing with no history of accidents which is relied upon by members of the community. There is a feeling that Network Rail has approached this issue with a view that the crossing will close, irrespective of the outcome of public consultation. Network Rail have not been able to secure support for their proposed alternative routes; the public, and their representatives, remain opposed to closure.

5.31.119 Assurances are sought that no final decision would be made without the proposal being considered by way of a public inquiry.

### **The Case of those Objectors who did appear at the inquiry**

#### **The Wivenhoe Society (OBJ 047)**

5.31.120 Paget Road crossing is well used. It is one of only 5 ways for people to get from the top half of Wivenhoe to the older bottom half of town. The crossing is at the bottom of a steep valley, and so, if closed would mean a significant detour in either direction to use Anglesea Road bridge or via the High Street.

5.31.121 Anglesea Road is a privately maintained public road, steep and uneven whereas High Street bridge has only narrow footways on either side. The proposal for a new footpath to Phillip Road makes no sense at all. Anyone walking to the crossing from the north will find it quicker to go via Queen's Road despite the steep gradients to arrive at High Street. Phillip Road is a vehicular route to the new health centre which has no footways for pedestrians.

5.31.122 Network Rail's camera census from 2012 and 2016 demonstrate use of the crossing by a high number of people every day who chose to use this crossing for travel between the two parts of the town in the manner and for purposes described by Miss Clarke. Such levels of use demonstrate that there will be a high number of people who will be inconvenienced by the closure of this crossing.

5.31.123 Network Rail argue that the crossing is dangerous, but no evidence has been produced of fatalities or accidents at the crossing. Although Network Rail's 'decision point' is 2m from the rails, a person standing closer to the rails would be able to see approaching trains even those partly obscured by the curves in the track; such users would be in no danger at all, even if they didn't hear the Covtec alarm.

5.31.124 Network Rail appear to be so risk averse that they wish to eliminate all risk to themselves and force existing users to take a 5 to 7-minute journey on foot either by Queen's Road / Anglesea Road in the north or Hamilton Road / Alma Street / High Street to the south.

5.31.125 It is not just the inconvenience of the detour which is the problem. Network Rail appear not to appreciate the gradient of the valley of which

Paget Road is at the bottom. Whilst a handrail on the steepest part of Queen's Road would be welcome, a user would have to be reasonably fit and able bodied to tackle Queen's Road every day. Anglesea Road is unmade and its loose gravel surface is a trip hazard for even the able bodied.

5.31.126 The alternative for users approaching from the south is Hamilton Street and Alma Street with users then having to negotiate the High Street / Station Road junction with its attendant problems of buses swinging over the High Street pavement when turning left out of Station Road. The regular traffic jams at this junction are not reflected in the 'swept path' plans produced by Network Rail's consultants.

5.31.127 In addition to pedestrians being inconvenienced, other road users will be impacted by the proposed changes to High Street; the width of the carriageway would be reduced forcing traffic into a single lane. Although Network Rail propose the closure of Paget crossing to reduce the risk to pedestrians, that risk will be transferred onto the pavements and roads elsewhere in Wivenhoe.

5.31.128 If Network Rail does not consider that Covtec provides adequate warning of an approaching train, it has the resources and should have the imagination to install a more robust system and not inconvenience a not insubstantial number of users who use Paget as an alternative to the steep inclines of Queen's Road.

5.31.129 The application to close Paget crossing should be refused. It has served Wivenhoe residents for 150 years and its closure would have an adverse and unfair impact upon all those residents who use it regularly.

#### **Ann Clarke (OBJ 080)**

5.31.130 A regular user of the Paget Road crossing in Wivenhoe, Miss Clarke has no car and lives south of the railway line. The crossing allows her to make the essential journey easily on foot between home on Anglesea Road and the Co-op. A private access from the rear of Anglesea Road to the south side of Paget Road provides a link to the crossing.

5.31.131 The route via the Paget Road crossing for a large part is level, lying close to a brook which runs through the Valley Road Estate and under the railway line to the river. The gradient is a real consideration when carrying shopping. The route incorporates a footpath, and three culs-de-sac so it is virtually traffic free until one reaches the uphill part before the Co-op. It avoids the High street completely. It is a pleasant, peaceful route and the crossing does not give rise to anxiety when using it. Users know what time the trains pass - between 15 and 25 minutes past the hour in both directions leaving most of the hour train free.

5.31.132 The creation of a footpath to link to Phillip Road does not compensate for the loss of the crossing. Phillip Road is to the north of the railway and an additional link to Phillip Road has no bearing upon the movements of those who use the crossing to travel to and from facilities in the south of the

town. The only route to Phillip Road from the south would be along narrow roads without pavements and with blind bends leading to the High Street.

- 5.31.133 The extension of Phillip Road may be beneficial for those wanting to visit the health centre but that may not be a significant number, and this would not be a priority for Network Rail.
- 5.31.134 The traffic audit conducted by Network Rail which concluded that traffic in the town presents no problems to pedestrians was inadequate as a study of traffic. It is well known that traffic regularly backs up in the narrow streets south of the railway and that buses turning left out of Station Road cause problems. Pedestrians have to be vigilant and keep out of the way where there is often no pavement and large vehicles are reversing.
- 5.31.135 Another problem not identified by the traffic audit was the danger to pedestrians where streets without pavements such as Alma Street join High Street. There is no visibility at Alma Street for pedestrians to see if a vehicle is turning into Alma Street from High Street; cars travel too fast for the conditions, the 20mph limit is not enforced.
- 5.31.136 Network Rail proposes to increase pedestrian use of streets where it is more likely for an accident to occur than when crossing the railway at Paget Road. The population of Wivenhoe is growing and there are more vehicles in the town as a result. The crossing at Paget Road is increasingly needed for safety and stress-free walking within the town using the old rights of way linked with it.

### **Wivenhoe Town Council (OBJ 029)**

- 5.31.137 Network Rail's assessment of the problems and inadequacies of E41 are based on fallacies: first, the inaccurate claim that up trains are not visible from the south side until they are a mere 83m away. Secondly, sighting distance having been increased by 50% due to 'vulnerable users' using the crossing when there were few 'vulnerable users' recorded. Third, the installation of whistle boards on both lines, which has led (fourthly) to the imposition of a speed restriction on the down line.
- 5.31.138 All trains stop at Wivenhoe. The 50mph limit was designed for fast (non-stopping) trains heading to Clacton – a service which ended in 1984. Stopping trains suffer from excessive cant when in the station; only by reducing the line speed and the level of cant through the station can an equality compliant station be delivered. It is likely that the speed limit will have to be less than 45mph; due to the sharp curves at Wivenhoe station it is highly unlikely that speeds on this line can be increased.
- 5.31.139 The user survey relied upon by Network Rail was conducted in July and coincided with the Wivenhoe Regatta on 16 July contrary to DfT guidance of conducting such surveys in 'neutral' months. Deleting the Regatta day figures would result in an average daily use by 90-100 people; comparable with the user survey undertaken by NR in 2012 of 67 per day prior to the housing development at the former shipyard.

- 5.31.140 Alterations to the High Street appear to be required. Network Rail have not provided detailed designs of the nature of those alterations, despite requests from the Town Council and others for them to be made available. The plans submitted showing proposed alterations and the swept path of buses are said to be sketches circulated for comment of 'outline proposals'<sup>219</sup> and not 'detailed design features agreed with ECC and CBC'<sup>220</sup>.
- 5.31.141 Those swept line sketches assume that there would be no other vehicles parked in Station Road to impede the progress of buses; as such they do not reflect everyday reality. The sketches also appear to ignore the existence of plans which ECC and Network Rail developed around 2008 for alterations to High Street bridge. The two proposals may not be incompatible, but the new proposals should acknowledge the existence of previous proposals.
- 5.31.142 The argument that the crossing cannot be closed unless the final design is agreed and signed off by the highway authority ignores the fact that the Secretary of State has to be satisfied about the suitability and convenience of the alternative being proposed before he can confirm the draft order. The Secretary of State cannot be satisfied on the basis that the highway authority may agree some scheme with the applicant, nor can he delegate his decision on suitability to the highway authority.
- 5.31.143 The proposed path from Paget Road to Phillip Road is not relevant to more than a tiny fraction of the journeys currently made by the Paget Road crossing; its possible usefulness for other people's journeys such as to reach the new health centre is not an issue to take into account in considering whether the crossing should be closed.
- 5.31.144 The use of High Street bridge is not a safe alternative. No reliance can be placed on the RSA for High Street. The evidence shows how little time the Audit team spent on site assessing 8 roads in Wivenhoe; it is hardly surprising that they found no issues. This cursory assessment should be considered against the experience of those resident in the town who have walked, cycled and driven these streets day and night for many years.
- 5.31.145 The proposed scheme of improvements to High Street bridge will have no effect on the southern half of the narrow eastern pavement; the risk of someone falling off the pavement or stepping into the road and being hit by a vehicle will remain.

### **Colchester Borough Council (OBJ 141)**

- 5.31.146 CBC has considered all of the applications to close crossings and has taken a balanced view, between risk, loss of amenity, strategic need and understands the highly sensitive nature of accidents at crossings and the financial impacts on Network Rail that accidents can cause. Taking a range

---

<sup>219</sup> NR/32/1 at 2.32.20

<sup>220</sup> Ms Tilbrook in EIC 23 October 2018

of issues into consideration the Borough has not objected to the mainline closures and only objects to closure of crossings away from the mainline.

- 5.31.147 The crossing provides a direct route between upper and lower Wivenhoe south of the railway. The route follows the bottom of a small valley parallel to a stream. By its nature, the crossing forms part of an efficient and convenient walking route with no need to climb up steep slopes to cross the railway. The route has historically connected upper Wivenhoe to lower Wivenhoe, the quayside where ship building, fishing and small port operations took place.
- 5.31.148 The crossing is well used by the local community by adults and accompanied children as shown in the Network Rail survey. This level of use was reflected in a half day survey carried out by CBC and Wivenhoe Tow Council on 26 and 27 July 2017 when 89 users were observed<sup>221</sup>.
- 5.31.149 The ALCRM score for E41 is C4; this means: (a) Individual risk rating of not higher than 1 in 1,000 but more than 1 in 5,000; (b) Collective risk rating of not higher than 1 in 1,000 but more than 1 in 5,000. The FWI for E41 is 0.004566819 (or close to 1 fatality in 240 years). These scores are not indicative of a dangerous crossing – CBC say that Network Rail's case on safety grounds is limited accordingly.
- 5.31.150 There appears to be little benefit to Network Rail in closing E41 now; namely no significant operational gain nor substantial financial gain. In short, any benefits to the rail network appear to CBC to be limited.
- 5.31.151 The proposed alternative route directs users to the High Street bridge, which is the main vehicle access into lower Wivenhoe, including access to the station by buses. The bridge has a footway on the west side of 1.3m width and the east side of only 70cm, narrowing to 40cm.
- 5.31.152 National and local guidance<sup>222</sup> is consistent with 1.8m being the accepted minimum width to accommodate a push chair and allow a pedestrian to pass by without stepping into the carriageway. The DfT note suggests that the narrower widths can be used but not over a length of more than 6m. The High Street railway bridge on its east side with brick parapets is approximately 25m long and therefore is in excess of the 6m guidance.
- 5.31.153 A peak hour traffic flow survey showed 217 vehicles passed over the bridge in the peak hour<sup>223</sup>. Of these 217 vehicles 70% turned into/out of Station Road. Buses turn in and out of Station Road on average every 6 minutes. The bus exiting Station Road has to swing across the High Street with its front overhanging the narrow east side pavement.
- 5.31.154 Paget Road crossing is a well-used transport link within the community – not only as a direct route across the town of Wivenhoe but also as a

---

<sup>221</sup> OBJ 141 proof E41 Appendix B

<sup>222</sup> OBJ 141 proof E41 Appendix C

<sup>223</sup> 14 September 2017 8am – 9am

general leisure and amenity route. The alternative proposed “pushes” pedestrians onto the narrow High Street bridge with its restricted width footway. There is an existing ‘conflict’ between turning buses and other highway users at the High Street / Station Road junction; the propensity for such conflict will undoubtedly increase with those pedestrians who would use E41 being diverted to it. Further, whilst not as lengthy as others within the application, in an urban setting the proposed alternative route is significantly longer than the current route it is intended to replace.

5.31.155 As the Local Planning Authority, Network Rail should also seek the approval of CBC to the new diversion route, in addition to consultation and agreement being sought from the Highway Authority<sup>224</sup>.

5.31.156 CBC say that, taking a holistic approach, greater benefit to the transport network rests with keeping E41 open. That is until such time as either E41 can be shown to be a constraint to supporting sustainable travel for the majority or, in the alternative, a solution is found to avoid the issues that arise with the proposed diversion onto and over the High Street Bridge.

### **The Ramblers (OBJ 148)**<sup>225</sup>

5.31.157 E41 has the highest level of daily use of any of the crossings in this Order. An average day has between 100-150 users, and on Saturday 9 July 2016, during the time of the Wivenhoe Regatta, 314 people used it. It is one of only three north-south pedestrian access points in the densely populated town of Wivenhoe. It is a key connection point for the local community to walk to local shops and services or to visit friends and family around town.

5.31.158 The evidence shows that every day around 100 times a person in Wivenhoe will decide to use E41 as opposed to the alternatives of Anglesea Road to the east, or High Street to the west. They must derive a convenience from doing so. All of that will be lost if Network Rail’s proposals for this crossing are confirmed.

5.31.159 Notably, E41 is used for utility walks, being located in the centre of town. As with E05, a five-minute detour here really can make all the difference to people choosing whether or not to walk or get into their cars - especially if the detour involves a less attractive route, up steep gradients such as at Queen's Road or alongside busy, dangerous roads such as High Street.

5.31.160 The proposed alternative route is not an acceptable replacement for a number of reasons.

5.31.161 Firstly, Anglesea Road, to the east, requires the need for users to navigate sharp gradients – especially on Queen’s Road – which is combined with loose surfacing. This poses an accessibility constraint, particularly in

---

<sup>224</sup> See NR 199 for Network Rail’s response

<sup>225</sup> OBJ 148 W-017 Ms Hobby

circumstances where users will need to navigate around traffic. By contrast, both Ms Hobby and Miss Clarke explained at the Inquiry how users tend to connect E41 to the Folley to the north – a narrow route heading northwards from Queen’s Road. It would seem that users walking this route today avoid the accessibility constraints present on Anglesea Road.

5.31.162 Secondly, and perhaps most fundamentally, the proposed diversion on the High Street bridge to the west is not safe. There was considerable agreement among the many objectors to this crossing, including CBC and Wivenhoe Town Council, that it is simply not acceptable for pedestrians to be routed to use this bridge without further information on how the proposed safety mitigation measures would work.

5.31.163 Crucially, buses regularly use the turn off to Station Road, which involves a significant sweep of the bus into the bridge space where pedestrian users may be located. Network Rail are proposing to implement footway improvements, but as Ms Hobby explained in her evidence, it was not apparent how they were intending to deal with the obvious lack of space here – how would a pedestrian footway fit?

5.31.164 More detail was provided by Ms Tilbrook as to what could be expected on the ground – the give way line would be moved and 1.8m footways, whilst achievable on both sides, would crucially not be possible along the full length of the eastern side of the bridge. Essentially, Ms Hobby was right – there is not sufficient space for a pedestrian footway on this structure.

5.31.165 What is more, Network Rail disclosed a plan that had been developed as part of its feasibility work on this proposal which showed bus turning sweeps. Ms Tilbrook accepted, on the basis of this plan, that there was not enough space for a bus to turn and a person to walk at the same time. She explained that the proposals were still an improvement to what existed at present and both Ms Tilbrook and Mr Kenning noted that people were already using this road. However, Network Rail is actively proposing to route walkers to this bridge as part of its alternative. The fact that people use the bridge already does not mean it is safe for them to do so.

5.31.166 Further, the plan was far from clear. At first Ms Tilbrook agreed in cross examination that it showed south bound buses but in re-examination she later confirmed it showed buses travelling north. In any event, it only appeared to show buses turning one way.

5.31.167 Nor do the Ramblers consider that the RSA’s finding of no issues on this route can be relied upon. Having regard to the time the auditing team appears to have spent on site<sup>226</sup>, Ms Tilbrook had to accept there was a chance they could have not seen a bus swinging out onto the bridge.

5.31.168 Clearly there are significant infrastructure constraints here which already cause disruption to traffic in this area. Ms Hobby’s evidence was of

---

<sup>226</sup> NR32/4/2 appendix D demonstrates that very little time was spent on site as the audit commenced at 12:15 on 22 September 2017 with a similar audit being carried out at E45 at 12:30 on the same day



buses occasionally striking walls when turning into, or out of High Street and of localised traffic jams on those occasions when buses travelling in opposite directions met at the Station Road junction. It is easy to imagine how an accident could take place.

5.31.169 Thirdly, Network Rail are proposing a new stretch of highway along Phillip Road. This may well be a welcome addition to pedestrian access in Wivenhoe, but it certainly does not make the alternative route suitable for users of E41. It provides east-west connectivity, not north-south.

5.31.170 For these reasons, the alternative route for E41 is not suitable or convenient. Moreover, Network Rail has failed to demonstrate why E41 needs to be closed in the first place.

### **Cyril Liddy (OBJ 059)**

5.31.171 Paget is personally used and valued as a community facility. The town is bisected by the railway line, with only five points at which the railway line can be crossed. There are antiquated Victorian bridges at High Street and Anglesea Road, an iron footbridge at the station, a cattle creep just outside the village and Paget crossing. None are really suited to the demands of today's population and to lose Paget would put additional burden upon the remaining crossing points.

5.31.172 The alternatives proposed by Network Rail are universally unpopular with Wivenhoe residents. There is no evidence of community support for the proposal to modify the traffic flow over High Street bridge by narrowing the carriageway and by providing priority working for traffic going south to north; such a scheme was tried 10 years ago but abandoned as buses collided with temporary barriers and destroyed them. In addition to posing a risk to buses, motorists and pedestrians, the proposal poses a serious risk to cyclists wishing to turn right into Station Road.

5.31.173 At the Queen's Road / Anglesea Road junction the gravel surface poses a risk to people who currently walk there; evidence was given relating to the injuries sustained by a recycling operative who slipped on the surface. Injuries to the elderly or infirm who slip on such a surface could be very serious, but such risks would be introduced by Network Rail's proposal and heightened in icy weather. Even if the state of the road surface could be improved (no plans are laid for such action), the gradients on Queen's Road and Anglesea Road would remain the same.

5.31.174 The proposal for a bench seat / rest area are unpopular with residents as such features tend to attract boisterous teenagers and sometimes less savoury elements. Furthermore, the Anglesea Road alternative requires handrails outside the houses at the top of Queen's Road and the other a footpath from the north end of Paget Road to Phillip Road. Handrails in Queen's Road would prevent residents using their cars and the Phillip Road option will bring pedestrians into conflict with motorists seeking access to the new Phillip Road Surgery due to open on 23 October 2017.

- 5.31.175 It is understood that the strategic objective of Network Rail is to provide infrastructure to facilitate a fast, safe and efficient railway and that the closure of long redundant crossings is inevitable. However, decisions should be made on evidence that is robust. The evidence submitted by Network Rail does not withstand even the most cursory inspection to support its contention that Paget should be closed, or that the alternative routes really are suitable.
- 5.31.176 NR has run several consultation exercises, but on each occasion made it amply clear during conversations with its representatives that the end result will be closure of E41, regardless of any evidence that contradicted the policy or any other effects on the local community. All who attended the consultations left with the distinct impression that NR did not conduct the exercise with an open mind, and it had predetermined the outcome, despite the lack of evidence of any real danger to its staff, the travelling public or the general public.
- 5.31.177 Mention has also to be made of the excessive use of train horns. Since the summer of 2014, train drivers have been instructed to sound the train's horn on approach to E41, for up to 3 seconds, during the permitted hours of 06.00 to 23:59. Whilst this is said to ensure that all residents of Wivenhoe are aware of a passing train, it is viewed as an attempt to shape public opinion to favour closure to remove the noise nuisance.
- 5.31.178 The policy arguments of Network Rail to justify closure are a 'one size fits all' approach to a place which has its own individual characteristics. The benefit to Network Rail would be *de minimis* compared to the inconvenience inflicted upon residents.
- 5.31.179 The alternatives proposed require pedestrians to place themselves at some disadvantage. Neither can be said to be an adequate alternative for the ease and convenience of crossing the railway at Paget Road, nor are they suitable, satisfactory or safe. Neither satisfies the provisions of section 5 (6) of the 1992 Act.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.31.180 Concerns were expressed that the proposed works would prevent access to businesses in the High Street, prevent access to property on Queen's Road or lead to an increase in anti-social behaviour in the vicinity of the proposed rest area. Although there would be some disruption during the period of works proposed by the scheme, it was not Network Rail's intention to obstruct access to property. Some short-term disruption may occur during the period of works, however, the final detail of those plans and any mitigation measures required would be included at the detailed design stage.

- 5.31.181 Paget Road crossing performs a utilitarian function in providing a means of access between the two parts of Wivenhoe bisected by the railway. It is the only means of crossing the railway which is free of vehicular traffic. The proposed alternative routes follow existing highways with the exception of the new footpath and right of way on Network Rail land to the north of the crossing and along Phillip Road. The issues arising from the alternatives are the gradient along Queen's Road and Anglesea Road, the proximity of traffic and the width of the footway on the south-eastern side of High Street bridge.
- 5.31.182 As the new footpath along Phillip Road runs on Network Rail land, compensation is unlikely to be an issue. With the exception of the width of the footway on the south-eastern side of High Street bridge, there do not appear to be impacts in this respect which could not be dealt with through detailed design.
- 5.31.183 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However, there are no private or public vehicular rights over E41 and the closure of the crossing to public pedestrian traffic would not have any impact upon RMG's existing vehicular use of those parts of Paget Road either side of the railway. It is possible that the postman may utilise E41 to cross the railway as part of the postal delivery round; however, no evidence was submitted to suggest that the closure of the crossing would adversely impact upon RMG's ability to deliver to those properties along Paget Road to the south of the railway. Similarly, the proposed alterations to High Street would not prevent RMG's vehicles or personnel from accessing lower Wivenhoe from the north.

#### **SOM4(b) Impacts on other users**

- 5.31.184 The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate. A TSR is imposed upon the down line which limits line speed to 20mph in the vicinity of the crossing. Network Rail submit that the TSR accounts for a 40-second increase in journey times for trains leaving Wivenhoe and heading to Clacton. Closure of the crossing would allow the removal of the speed restriction and allow down trains to run at line speeds with benefits accruing to train operators and passengers.
- 5.31.185 It is contended by the objectors that the basis on which sighting distances are calculated is incorrect and that there should be little or no impact upon down line speeds as a result of the crossing at Paget Road. It is contended that the requirement for sighting distances to be calculated from the point where the front of the train is continuously in view is erroneous; a pedestrian standing at the up line decision point has a view of a train approaching on the line long before it reaches that part of the curve which temporarily obscures the view of the train through the bridge. Sighting distances of the train are significantly longer than the 83-metre distance between the decision point and Anglesea Road bridge. It was also

suggested that standing closer to the rails would give a view of the front of the train without it being obscured by the bridge.

- 5.31.186 As part of my site visits, I stood at the up-line decision point and observed an approaching train. The front of the train did disappear from view temporarily due to my position relative to the curve approaching Anglesea Road bridge. The front of the train only came fully into view again as it emerged from under the bridge. Network Rail's sighting measurements are taken in line with its policy. The limited sighting distance at this location has resulted in whistle board mitigation on the up line and the ORR requires a whistle board on the down line as one has been required on the up line.
- 5.31.187 As I understand it, the down line whistle board cannot be located in a position to give sufficient advance notice of the approach of a train at 50mph due to infrastructure constraints. The position at which the whistle board can be located to provide mitigation limits down line speed to 20mph.
- 5.31.188 Although Network Rail's procedures is not a matter for the inquiry, the points raised by the objectors in relation to sighting distances on the up line have some force. Although the front of the approaching train temporarily disappeared from view whilst I was standing at the decision point, I was aware of the approach of the train as there is a reasonably extensive view of the up-line track from that point. Just because the front of the train had disappeared from view did not mean that the train was no longer approaching the crossing; on this line, there is nowhere else for the train to go.
- 5.31.189 I was therefore aware of the approach of the train long before it had emerged from under Anglesea Road bridge. The point advanced by the objectors is that the sighting distance of the approach of an up-line train (if sighting were to be based on the earliest time that a train comes into view) is much greater than that which Network Rail have based their calculations on and this would have an impact upon the need for whistle board mitigation and ultimately line speeds on the down line.
- 5.31.190 It would be understandable for sighting times to be determined from when the whole of the front of train was in view on those lines where the line branched and users would be unsure of whether the train they had seen was travelling towards them or was taking the branch line; that would be eminently sensible. In the case of the up line into Wivenhoe however, there is nowhere else from an approaching train to go; so, the adherence to the 'front of train' policy appears illogical at this particular location.
- 5.31.191 Whilst I am unable to affect any changes to Network Rail's procedures, there is some merit in the points being put forward by the objectors. Recognition of an increased sighting distance on the up line may not require whistle board mitigation with consequent effects for line speeds on the down line and any delays arising from the imposition of a TSR.
- 5.31.192 I would not advocate viewing approaching trains from other than the 2-metre decision point; at the position where the 'stop, look and listen'

signs are located there is an adequate view of an approaching train on the up line through Anglesea Road bridge.

**SOM4(c) Impact on flood risk**

5.31.193 There is no indication that the proposal would have any impact on flood risk. The drain adjacent to that part of the crossing approach on the north side which is to be retained will be culverted to provide access to the proposed new footpath to Phillip Road.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.31.194 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.31.195 E41 is in the built-up area of Wivenhoe; the proposal would have no impact upon agricultural land or forestry. Some vegetation clearance on the northern railway embankment would be required to create the new footpath to Phillip Road. Whilst this would have some localised impact, there is no indication that the works proposed would impact upon species of environmental concern. The type of boundary fence proposed by NR to secure the railway boundary would not be out of place in this urban setting; consequently, there would be little impact upon landscape.

**SOM 4 (g) Any other environmental impacts including noise and health**

5.31.196 Many objectors complained about excessive use of train horns and suggested that the three second blast on the horn was introduced as a result of the widespread objection to the proposed closure of the crossing. Use of the train horn was seen as a means by which objectors could be coerced into accepting the closure of the crossing as noise from train horns would be eliminated.

5.31.197 It is true that any nuisance caused by train horns would cease if there was no requirement for an audible warning of the approach of a train to be given. This would equally apply if sighting distances at the crossing were such that whistle boards were no longer required as mitigation.

5.31.198 The objectors do not appear to object to train horns being sounded per se; it is the duration and change in the type of sound which is a cause for concern.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.31.199 It is common ground that the principal use of this crossing is for access between the two parts of Wivenhoe bisected by the railway. The crossing serves a utilitarian function in allowing access through the town on

relatively flat ground when used in conjunction with other urban footpaths and accessways. Miss Clarke's evidence was of using the crossing as part of a route to the local Co-op without having to walk up the gradient of Queen's Road. Other evidence was of use as access to the nearby trading estate and to the quayside and for visiting friends, relatives and neighbours.

5.31.200 The main issue arising relates to the gradient of the alternative routes being proposed, the length of those routes in comparison to the existing crossing, the absence of footways on the suggested alternative to the east and south and the proximity of traffic to those users who would be displaced from the crossing. Although it was suggested that a bridge should be built to compensate or that there were other technological solutions which could be implemented to mitigate the perceived risk at the crossing, these were not matters before the inquiry.

5.31.201 The DIA Scoping report for E41 was Amber and suggested that the crossing could be closed as soon as infrastructure interventions had taken place. However, the Equality and Diversity Overview Report rating was red and noted that the proposed alternative over Anglesea Road incorporated steep gradients and no footway which may restrict access for some users. A full DIA was carried out in relation to E41.

5.31.202 The DIA recognised that journey distances would be increased as a result of the proposed diversion (between 330 and 490m and that such increases may disproportionately impact upon disabled users and those who experienced difficulty in walking long distances. The DIA also recognised that the gradients on Queen's Road and Anglesea Road could potentially reduce pedestrian accessibility. The lack of footways on Anglesea Road and Phillip Road were considered to reduce the safety benefits which older users may derive from closure of the crossing as pedestrians would need to walk in the carriageway when using the proposed diversions.

5.31.203 Mitigation for the steep gradient of Queen's Road is proposed in the form of re-profiling the footway in the vicinity of the Queen's Road / Valley Road / Anglesea Road junction to provide a rest area with the possible provision of a bench seat on which users could rest. The rest area would be at a point approximately half-way along the gradient which users would have to overcome. No doubt the rest area would be welcomed but there is no provision being made for any such rest area at the top of Queen's Road for those adversely affected by the remainder of the gradient.

5.31.204 Anglesea Road is privately maintained public carriageway. There are no footways along the road and pedestrians are required to walk in the carriageway. Similarly, there are no footways along Anglesea Road bridge. The characteristics of this road were considered to be a source of risk from tripping or slipping and from vehicular traffic. The ATC data showed that the 85<sup>th</sup> percentile of traffic ran at speeds of less than the posted limit of 20mph; although there may be a risk of collision with vehicular traffic, Anglesea Road is broad and there are good lines of sight along it. The unsealed nature of the road surface contributes towards the slow speed of vehicular movement along it. However, the nature of the surface would not necessarily improve access for certain groups of users and may increase the

risk of pedestrians tripping or slipping compared with the existing crossing surface.

- 5.31.205 Similar concerns were raised regarding the use of roads to the south of the crossing as part of the alternative route, particularly Alma Street and Hamilton Road where there were no footways. Miss Clarke was particularly concerned with regard to Alma Street and the junction of High Street with its blind corners and where accidents and near misses had occurred in the past. The proposal does not make any suggestions for mitigation at this point, nor was this junction commented on in the stage 1 RSA.
- 5.31.206 The proposed footpath to Phillip Road would mitigate the need for pedestrians to negotiate the incline of Queen's Road to the west of Paget Road. For those users wishing to travel south of the railway, the new footpath would lead them onto the High Street bridge. The gradients on this proposed path are shallower than on Queen's Road, although users will be required to negotiate vehicles travelling to residential premises and the health centre on a route which has no footway.
- 5.31.207 In recognising that the footway over High Street bridge is inadequate, Network Rail propose narrowing the carriageway to single lane priority working by widening both footways. It was accepted by Network Rail in cross-examination that it would not be possible to widen the footway on the south-east side of the bridge as this would prevent buses from making the turn to or from Station Road. Although it was submitted that pedestrians were likely to be currently using this footway and that pedestrian / bus interface was 'self-regulating', the proposal would lead to an additional 100 pedestrian journeys per day by people who can currently avoid High Street bridge.
- 5.31.208 The footway on the south-eastern side of the bridge is only 80cm at its widest and its useable width is reduced to 40cm at one point due to the presence of a telegraph pole; there are no proposals to modify the bridge at this point to allow for the creation of a wider footway; pedestrians are therefore required to step into the carriageway to negotiate around the telegraph pole at the point where a bus entering High Street has to swing over the footway to make its turn.
- 5.31.209 The limitations at the south-eastern end of the bridge which currently exist would not be addressed by the proposed alterations to High Street. To avoid those limitations, users emerging from Phillip Road would be required to cross High Street, then cross Station Road and then re-cross High Street to enter Alma Street.
- 5.31.210 The proposed alternative routes would increase the length of a utilitarian journey between the two parts of Wivenhoe bisected by the railway. For those undertaking a utilitarian journey, such as Miss Clarke going shopping at the Co-op, an increase of 330m in journey distance would be highly inconvenient. Paget Road crossing provides a relatively flat access from one part of the town to another. For those visiting friends or relatives in this area, the crossing provides a direct link. Although unsealed, the path

surface is firm and well-compacted and has ramped access on both sides. It provides a traffic-free means of crossing the railway.

5.31.211 By contrast, the proposed routes have severe gradients or require pedestrians to walk along carriageways without footways and which, in the case of Anglesea Road, has an unmade and uneven surface. The proposed improvements to High Street bridge will not address the existing shortcomings of the very narrow footway on the south-eastern side. Although there may be safety improvements for users in removing them from the crossing, the proposed alternative would subject users to other safety risks from vehicular traffic, and to the inconvenience of severe inclines and increased journey distances.

5.31.212 Taking these matters into account I consider that the Secretary of State should be aware that there are issues with access on the proposed alternative routes. The steep gradients on Queen's Road are likely to limit use of the proposed alternative by some current users who do not find the existing flat route over the railway to be a problem. Similarly, the unsealed and unmade surface of Anglesea Road is likely to pose problems for those with impaired mobility. To avoid potential contact with buses turning from Station Road into High Street would require users diverted from E41 to cross High Street twice along with the Station Road junction.

5.31.213 The evidence indicates that reduced access would arise from the proposed diversion for the elderly and those persons with mobility impairments who currently can use the crossing. In addition to the proposed alternatives being unsuitable and inconvenient for the general population, including the crossing in the Order would fail to advance equality of opportunity between those who share a protected characteristic and those who do not. Including this crossing in the Order would raise the likelihood of the PSED not being met.

5.31.214 Whereas closure of the crossing may bring benefits to Network Rail in terms of the operation of the railway, the proposed alternative routes along Queen's Road, Anglesea Road, Phillip Road and High Street bridge are unsuitable and inconvenient for those members of the public who currently use Paget crossing.

### **Other matters – consultation**

5.31.215 Whilst Network Rail contended that what they sought to gain from the public consultation process was feedback on the proposed alternatives and that closure was not a forgone conclusion, it is clear that this was not what was understood from those involved in the consultation process. Whilst Network Rail did not cite safety as the driving force behind the proposal, it is also evident from the responses made that the public perception was that Network Rail sought the closure of the crossing on grounds of safety.

### **Overall conclusion**

5.31.216 Taking account of all the above and all other matters raised in relation to E41, I conclude that the Secretary of State should not include E41 in the



Order as the proposed alternative would not provide existing users of the crossing with a suitable or convenient alternative means of crossing the railway.

## 5.32 **E43 High Elm**

### **Description of the crossing**

- 5.32.1 Footpath EX/157/4 commences on the B1027 St Osyth Road and runs in a northerly direction to cross the Colchester to Clacton railway via E43. The footpath then continues in a generally northerly direction through woodland to its junction with FP EX/157/5 which runs east - west from another point on the B1027 to the Alresford / Thorrington parish boundary. The land to the north and south of the railway is predominantly agricultural with some woodland cover. There are some residential properties along Tenpenny Hill and St Osyth Road, whereas the developed part of Alresford is found to the west of the B1027.
- 5.32.2 There are no public rights of way on the south side of St Osyth Road; the next PROW (FP EX/181/1) is approximately 1Km to the south-east.
- 5.32.3 E43 is approached from the south along an unsurfaced access track and field edge path in the margin of the field served by the access track. A stile in the railway boundary leads to two short flights of steps down to the rails. There is crossing decking furniture at the crossing itself to enable pedestrians to cross safely, and a short flight of steps leading users away from the rails. A ramped access then provides access to a stile at the railway boundary with Tenpenny Woods.
- 5.32.4 E43 is a passive level crossing requiring pedestrians to stop, look and listen for approaching trains. The railway comprises two lines of rails and carries passenger trains at a line speed of 75mph<sup>227</sup>. The ALCRM score for this crossing is C7. A 9-day camera census was carried out in July 2016, which showed 22 adult pedestrians using the crossing over this period, none of which were believed to be vulnerable; the busiest days being Sunday 10, Monday 11 and Friday 15 July 2016 when 4 pedestrians were recorded each day. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposal**

- 5.32.5 It is proposed to close E43 to all users, extinguishing the PROW over it and that part of FP EX/157/4 between the railway and the B1027.
- 5.32.6 Users travelling from Frating Green (to the northeast of the level crossing) to Alresford on FP EX/181/20 would use FP EX/157/5 to continue west until they reached St Osyth Road. A new crossing point is to be provided at St Osyth Road within the carriageway to enable users to cross the road one carriageway at a time. Once on the west side of St Osyth Road, users could travel directly into Alresford along Coach Road or travel south on the footway of St Osyth Road to a second crossing point which would allow users to continue along St Osyth Road beyond the end of the existing

---

<sup>227</sup> NR 143

footpath. For those pedestrians travelling between the northern and southern terminal points of FP EX/157/4 the proposal would increase that journey by approximately 925m.

- 5.32.7 Level crossing infrastructure would be removed and a 1.8m high chain link fence would be erected to seal the railway boundary and prevent trespass on the line.

### **The Case for Network Rail**

- 5.32.8 The total additional length of the diversion route to the east is approximately 925m however, the origin and destination points will affect the overall diversion length for many users.
- 5.32.9 Following a scoping study<sup>228</sup>, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.32.10 The location of the crossing, its position in relation to the wider public footpath network, user census data and consultation feedback suggests that FP EX/157/4 is used for recreational walking purposes as part of long-distance journeys between villages; Frating, a village northeast of the level crossing is approximately 3Km distant.
- 5.32.11 There is no ongoing connectivity to footpaths generally to the west of the level crossing within Alresford or to the south. To reach the existing footpaths to the southeast and northwest require users to walk alongside the B1027. Current users of E43 wishing to travel south east to FP EX/181/1 to the east would be required to walk an additional 400m over and above a journey using E43. It is not considered that the additional distance would deter existing users from using the diversion as part of a leisure route – either for long distance or local walks. Mr Kenning fairly acknowledged that the impact would be greatest for those living closest to the south of the level crossing from where FP EX/175/4 would be extinguished.
- 5.32.12 Following feedback from the consultation exercise, it is proposed to retain access into the woodland to the north of the level crossing – albeit as a ‘there and back’ route. An alternative proposal had been considered involving the provision of a footpath on the north side of the railway from the B1027 overbridge, but was discounted due to the impacts on vegetation, trees, private land and the need to install steps for users on the road embankment<sup>229</sup>.
- 5.32.13 In response to ECC’s concerns about the standard to which the proposed pedestrian crossing island would be created, these will be designed in accordance with ECC highway standards and submitted for approval before E43 can be closed. A site meeting between NR and ECC has confirmed that

---

<sup>228</sup> NR 119 p122

<sup>229</sup> NR32/2 tab 2 p165 red route

the proposed islands can be constructed within the order limits shown on replacement sheet 49.

- 5.32.14 ATC data<sup>230</sup> showed an average 2-way daily traffic flow of 9630 vehicles with the 85<sup>th</sup> percentile speed of vehicles being 45.3mph where the posted is 40mph. There were no pedestrian accidents on the B1027 between 2000 and 2016.
- 5.32.15 There is an existing footway along the south western side of the B1027. At the railway overbridge a VRS is present which is located between the carriageway and the footway.
- 5.32.16 The proposals were considered appropriate when the traffic data was considered on this section of the route. However, it is acknowledged that the posted speed limit is exceeded which could be discussed further with the bodies responsible for traffic enforcement.
- 5.32.17 It is acknowledged that FP EX/157/4 offers the potential for circular walks, however anyone wishing to reach the level crossing from within Alresford would need to cross the B1027 at some point, a matter fairly agreed by Mr Lee in cross-examination. Mr Lee also agreed that the provision of pedestrian islands would improve conditions for current users. The fact that existing users of the crossing will have to interact with the B1027 today is clearly relevant, in NR's submission, when considering the concerns expressed around 'perception' of safety of the proposed diversion route.
- 5.32.18 For the reasons set out by Ms Tilbrook in her evidence summarised above, NR maintains that the proposed diversion route would provide a suitable and convenient replacement for existing users. Others clearly disagree.
- 5.32.19 NR submits, however, that the Secretary of State may properly conclude that the proposed diversion route will be safe, suitable and convenient and that the Order may be confirmed without modification.

### **The Case of the Objectors who did not appear at the inquiry**

#### **Mark Hanlon (OBJ 017)**

- 5.32.20 Mr Hanlon is particularly dismayed at the proposal to close E43 and FP EX/157/4. As an Alresford resident, this path is used every day for walks to the fields in Tenpenny Woods along with other residents. The suggestion that train speeds will improve is unlikely as the crossing is close enough to Alresford station for trains to be slowing down on approach or speeding up after departure. It is more likely that Network Rail are engaged in a cost cutting exercise at the expense of Alresford residents and the wider walking public.

---

<sup>230</sup> NR32/2 tab 1 p24

5.32.21 The view along the railway line is extensive in either direction and there is no record of accident or incidents at the crossing; safety is not an issue or justification for closing this crossing.

### **Nina Murton (OBJ 099)**

5.32.22 Mrs Murton expresses concerns regarding access to her land for the purpose of Network Rail's works to secure the boundary of the railway, particularly in relation to the removal of trees, shrubs and other mature plants already growing in parcel 09 on replacement sheet 49 and the likely effect upon the property if visual and noise screening trees and shrubs are removed. Mrs Murton expresses no opinion one way or the other regarding the proposed closure of crossing E43.

### **The Case of the Objectors who did appear at the inquiry**

#### **The Ramblers (OBJ 148)<sup>231</sup>**

5.32.23 The Ramblers object to the proposal to close E43 High Elm Crossing because the alternative will involve walking along a busy stretch of road, and crossing it twice, as there is a pavement on only one side of the road. It will also mean walkers being subjected to exhaust fumes from vehicles and being at risk each time they cross. There is a drastic change in quality and experience between the existing and alternative routes. At present, users approaching E43 from the south are able to easily access the highly attractive woodland walk to the north. As Mr Coe put it, this is a "beautiful walk – in springtime it's gorgeous".

5.32.24 Comparing the existing route to the proposed diversion is like comparing chalk and cheese. Mr Coe was clear, the diversion simply "hasn't got the same appeal". The proposal takes users along the busy B1027, requiring them to cross the road twice. Whilst the woodland path to the north of the level crossing will not be extinguished, clearly the opportunity to do circular walks using E43 will be lost.

5.32.25 Again, this is a crossing where there are no known plans to increase train speeds; Mr Kenning was unaware of any such proposal and accepted in cross-examination that the presence of other level crossings on the line would limit what operational changes Network Rail can undertake in the future. Mr Coe queried why MSLs had been installed at the next crossing to the east but were not offered as mitigation here.

5.32.26 In terms of safety risk, the proposals replace one passive crossing on the railway with two passive crossings on the B1027. The proposal to close this level crossing has not been justified.

---

<sup>231</sup> OBJ 148 W-011 Mr Coe

### **Essex County Council (OBJ 195)<sup>232</sup>**

- 5.32.27 The issues before the inquiry in relation to High Elm were reduced following a joint site visit by ECC and Mott Macdonald. The purpose of the visit was to assess whether the pedestrian crossing islands proposed by NR to mitigate the risk of conflict between pedestrians and vehicles crossing the busy road could be achieved within the order limits. The outcome of the meeting concluded that the proposal would mitigate the risks and could be achieved within the order limits.
- 5.32.28 The other substantial issue explored at this location was the effect closure had on local use. In evidence, Ms Tilbrook had considered the use of the crossing in the context of longer leisure walks, but in cross-examination accepted that local circular walking for dog walking, or other leisure was a likely use of this crossing and acknowledged that some people prefer a walk with a sense of "going somewhere". In consideration of that use, Ms Tilbrook acknowledged closure had a greater effect on those users.
- 5.32.29 In addition, Mr Kenning in cross examination also accepted that the properties to the south-east, in the region of the location of the Kennels, are most affected by the diversion. In response to the consultation, 75% of the responses disagreed with the proposals<sup>233</sup>. Mr Lee's evidence was that the current route provided "lovely woodland walks" for local people, but also creates wider access to Frating and Thorrington. The proposals would see a dead end created to FP EX/157/4 and frustrate the current connectivity of the network, although the retention of access to Tenpenny Woods is welcomed.
- 5.32.30 ECC submit that the alternative proposal here is not suitable and convenient for those undertaking circular walks. The route is not suitable within the definition set out in para 4 of the note<sup>234</sup> as the route is not appropriate for that particular purpose. In addition, the route is not convenient as it does not fit well with a person's needs or activities if those activities are circular dog walks through Tenpenny Woods.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.32.31 The owner of the land crossed by FP EX/157/4 to the south of the railway is likely to benefit from the proposed closure as the land will no longer be burdened by a PROW. The proposal is unlikely to have any effect upon statutory undertakers or utility providers. Mrs Murton's concerns relate to the possible impact of works to remove crossing infrastructure upon trees

---

<sup>232</sup> OBJ 195 W3/1 Mr Lee

<sup>233</sup> NR32/2 tab 2 p284

<sup>234</sup> NR 135

which screen her garden from the railway. There do not appear to be impacts in this respect which could not be addressed through detailed design, sympathetic management of boundary vegetation or compensation.

- 5.32.32 The implementation of the alternative route is unlikely to have any detrimental impact upon adjacent landowners, local businesses or utility providers as the proposed alternative utilises the footways of the existing highway infrastructure.

#### **SOM4(b) Impacts on other users**

- 5.32.33 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate. It was acknowledged by Network Rail that there were no current plans to raise speeds on this line. There are other crossings within the immediate area which are likely to place constraints upon projected improvements to this line.

#### **SOM4(c) Impact on flood risk**

- 5.32.34 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.32.35 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.32.36 No submissions were made which suggested the proposal would have any adverse impact upon the landscape. Although new fencing will be installed along both the northern and southern sides of the railway in the vicinity of E43 if the proposal is approved this would be a renewal of the existing boundary fence (minus the stiles) and will be required to prevent future trespass upon the railway. As the proposed footpath utilises existing infrastructure found on the B1027, there will be no adverse impact upon agricultural or silvicultural activity.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.32.37 The objectors expressed concerns at having to walk adjacent to the B1027 road and to be exposed to traffic noise and fumes from passing vehicles which was in direct contrast to the existing route which led through attractive woodland.
- 5.32.38 At this location the alternative route would run along the footway of the B1027 on which the majority of passing vehicles exceed the posted speed limit; there would be little opportunity to escape the noise and fumes from

passing traffic. Although pedestrians are currently required to cross the B1027 to access FP EX/157/4 and will have some exposure to noise and fumes from passing traffic, the duration of such exposure would be greatly increased by the proposed diversion.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.32.39 Footpath EX/157/4 provides a link between Alresford and the public rights of way network to the north of the B1027 and the railway. The camera survey suggests that the footpath is in daily use by a small number of users. Although the path provides a link to the wider network leading to Frating, the path is also used for local circular walks.
- 5.32.40 The principal issues raised in relation to this proposal were the quality of the proposed alternative route compared with the existing crossing point and the impact the diversion would have on local use.
- 5.32.41 The proposal would result in an overall increase in journey distance of approximately 925m and would require anyone travelling between the current terminal points of FP EX/157/4 to cross the B1027 twice. For those undertaking a recreational walk between Alresford and Frating, an increase in distance of almost 1Km may not present a significant inconvenience.
- 5.32.42 Network Rail acknowledged that FP EX/157/4 was also used by local residents as part of a short circular walk to and from Alresford and that such users would be disproportionately impacted by the diversion. For users such as Mr Hanlon, the closure of the crossing and the removal of the ability to undertake a short circular walk in the countryside north of the railway would be a significant inconvenience; the proposed alternative route would not serve the same purpose to which the current route is being put and whilst it provides a means of access to the footpath network to the north of the railway, the next available point at which the railway could be re-crossed as part of a circular walk is 1.1Km to the south east of E43. This would be neither a suitable nor convenient replacement for those undertaking short circular walks which incorporate E43.
- 5.32.43 Whilst it would be possible to undertake a short circular walk from Alresford along the footway on the south side of the B1027, such a walk would be subject to the noise and traffic fumes complained of by the objectors. The ability to undertake such a walk already exists and for users such as Mr Hanlon, the crossing at E43 clearly presents a more attractive and pleasant option for the reasons given by Mr Lee and Mr Coe.
- 5.32.44 It is common ground that anyone undertaking a short walk from Alresford would have to cross the B1027 at or near Wivenhoe Road or at or near Coach Road as part of that walk. It was also acknowledged by the objectors that the provision of crossing points at the centre of the road was likely to benefit anyone seeking to cross the road. However, whilst the introduction of crossing points would provide a central refuge so that the carriageways would be crossed one at a time, this would not mitigate the unsuitability of



the proposed route for short circular walks or the inconvenience of the loss of E43 as part of such walks.

- 5.32.45 The Equality and Diversity Overview report rating for E22 was green and no DIA was carried out. Whilst the proposed alternative route may be more accessible in that it would not be subject to the steps and stiles found on the current route, this would not offset the unsuitability or inconvenience which would arise for current users of the existing crossing.
- 5.32.46 Whereas closure of the crossing may bring benefits to Network Rail in terms of the operation of the railway, those benefits are insufficient to outweigh the inconvenience which would arise to those members of the public who currently use the crossing if E43 were closed.

### **Overall conclusion**

- 5.32.47 Taking account of all the above and all other matters raised in relation to E43, I conclude that the Secretary of State should not include E43 in the Order as the proposed alternative would not provide existing users of the crossing with a suitable or convenient alternative means of crossing the railway.

5.33 **E45 Great Bentley Station and E46 Lords No. 1**

**Description of the crossings**

- 5.33.1 **E45 Great Bentley Station** is located on the Colchester to Clacton line and is located approximately 20m eastwards of the station platform. Footpath EX/165/8 commences in Great Bentley just south of Bentley Green and runs in a generally south-easterly direction crossing the railway at E45 and then continuing over agricultural land to St Mary's Road approximately 1Km to the south-east of the crossing. The land immediately to the north of the railway is predominantly residential with some small commercial premises in the vicinity of the railway station. To the southwest of the crossing is a business park whereas the land to the south east is arable and pastureland. That part of the arable land immediately to the east of the business park benefits from planning permission for housing development.
- 5.33.2 E45 is approached from the south along an unmade cross-field and field edge path. There are stiles in the railway boundary fences and steps up to the track bed. The crossing has decking in between the rails to facilitate access.
- 5.33.3 E45 is a passive level crossing requiring pedestrians to stop, look and listen for approaching trains. The railway comprises two lines of rails and carries passenger trains at a line speed of 75mph. The ALCRM score for this crossing is C6. A 9-day camera census was carried out in July 2016, which showed 35 adult pedestrians using the crossing over this period; the busiest day being Saturday 9 July 2016 when 12 pedestrians were recorded. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.
- 5.33.4 **E46 Lords No 1** is located approximately 300m east of Great Bentley Station. Footpath EX/165/12 commences on Pine Close and runs before turning to the east and running parallel to the railway for approximately 24m to a stile in the railway boundary fence. The footpath crosses the railway and then runs in a generally south-easterly direction to its junction with BR EX/165/20 just north of St Mary's Road. The land immediately to the north of E46 is housing with the land to the south being agricultural pasture.
- 5.33.5 E46 is a passive level crossing requiring pedestrians to stop, look and listen for approaching trains. The railway comprises two lines of rails and carries passenger trains at a line speed of 75mph. The ALCRM score for this crossing is C6. A 9-day camera census was carried out in July 2016, which showed use by 23 pedestrians, of whom 16 were unaccompanied children with the remainder being adults. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

**Description of the Proposal**

- 5.33.6 A single solution is advanced as an alternative route for the closure of these two crossings.

- 5.33.7 It is proposed to close E45 and E46 to all users and extinguish the PROW over both crossings. In addition, it is proposed to extinguish that part of FP EX/165/8 between the railway and Birch Avenue and approximately 135m of FP EX/165/8 south of the railway to prevent the creation of culs-de-sac. It is also proposed to extinguish FP EX/165/12 north of the railway to Pine Close along with FP EX/165/12 south of the railway to its junction with BR EX/165/20.
- 5.33.8 It is proposed to create a new public footpath between Plough Road and the residual section of FP EX/165/8. Users from Great Bentley village wishing to travel south would use the existing road network from Birch Avenue to reach to Plough Road and cross the railway by means of Great Bentley CCTV crossing at the station or via the station footbridge. They would then continue south a short way along Plough Road before entering the industrial estate and making their way to join a new unsurfaced footpath. This footpath would then follow the boundary fence of the planned allotment area and join FP EX/165/8 to continue south. The proposal would increase journey distances by approximately 210m.
- 5.33.9 Those users who would otherwise have used E46 would follow existing footways from Pine Close to join the diversion as set out above and after joining FP EX/165/8 would continue south until they reach BR EX/165/20. At this point they would travel east along the bridleway to the point where FP EX/165/12 currently meets the bridleway. The proposed diversion of E46 would add an additional 750m to a journey between those parts of FP EX/165/12 proposed for extinguishment.
- 5.33.10 At both E45 and E46, the existing level crossing infrastructure would be removed, and the railway boundary fence would be renewed to prevent trespass onto the railway.

### **The Case for Network Rail**

- 5.33.11 These two crossings are situated on the Colchester to Clacton line, in close proximity to Great Bentley Station. E45 in particular is situated around 20m away from the station platforms. Mr Kenning's evidence was that with projected upgrades to the rolling stock operating between Colchester and Clacton, ten-car trains will exceed the length of the station platforms and 'sit back' over the crossing when calling at the station. Diverting users from the southern end of the crossings and along the station platform to the overbridge was not feasible due to issues with revenue collection and checking whether those using the platform had valid tickets. There was insufficient space to be able to physically separate a footpath from the platform.
- 5.33.12 The proximity of the crossings to Great Bentley Station and the Plough Road crossing meant that the installation of an MSL system at E45 or E46 would be highly complicated and expensive<sup>235</sup> and would require a system

---

<sup>235</sup> NR 147

integrated with the signalling on the line. At Frating Abbey, there were no such constraints and it had been possible to install a cheaper and less complex stand-alone or 'overlay' MSL system. Network Rail does not rely on those signalling difficulties as its "case" for closure of E45 / E46. However, these crossings provide a tangible example of the difficulties that can arise when seeking to manage risk through installation of technology: it is not as simple as merely installing the red and green lights.

- 5.33.13 Similarly, E45 also presents a tangible example of the constraints that level crossings can impose on non-railway development in an area. As set out in the evidence submitted on behalf of Mr and Mrs Irwin, planning permission for residential development to the south of the railway is subject to a condition restricting occupancy until the level crossing is closed. Again, NR does not rely on this restriction as justification for closure of the crossing, but the Inspector's decision in that case and his justification for the imposition of a Grampian condition was that housing development immediately to the south of the railway would result in increased use of E45 and would harm pedestrian and rail safety if the crossing were not closed.
- 5.33.14 It is proposed that users of the crossings should be diverted to the Plough Road level crossing via the existing highway network to the north, and via a new footpath running east-west from FP EX/165/8 to Plough Road. Mr Fisk's evidence was that around 350 people per day were currently using the road crossing. It is acknowledged that the proposal would introduce additional distance of approximately 750m for those travelling north-south across the crossings today – specifically, over E46. However, the user census and consultation responses together with the location of the crossings in relation to the wider public rights of way network suggest that the crossings are used primarily for leisure purposes. It is not considered that recreational or leisure users would be inconvenienced by the increase in journey times and distances arising from the proposal.
- 5.33.15 NR maintains that the proposed diversion routes, via the active level crossing (or, indeed, the station footbridge when the barrier is down on the level crossing) maintain connectivity to both sides of the railway to access the wider footpath network for leisure use, and to access services within Great Bentley. The closures, notably, would not preclude access to the village green to the north, albeit it would alter the route by which it was accessed for those travelling from the PROW network to the south.
- 5.33.16 The proposed diversion route has been subject to an RSA which did not identify any safety concerns. In response to concerns raised by the Parish Council regarding the lack of footways on some roads in the area and the potential for conflict at the entrance to the station car park, Ms Tilbrook's evidence was that roads in the vicinity of the station were being used by pedestrians with no evidence of accident or conflict arising. Given current traffic speeds, use of those roads by pedestrians did not give cause for concern.
- 5.33.17 Network Rail maintains that the Order may properly be confirmed without modification.

## **The Case for the Supporter**

### **Mr Glegg of Intermodal Transport for Mr & Mrs Irwin**

- 5.33.18 In relation to the proposed development of 150 houses on land to the south of the railway, Network Rail raised concerns regarding any notable intensification of use of crossing E45. This was on safety grounds. NR agreed that 25 dwellings could be constructed if the crossing remained open with the balance (125 units) being delivered upon closure of the surface crossing. The Inspector determining the appeal based his judgement about giving consent on the basis there were reasonable prospects of delivering the closure and on the basis that the diversion of the footpath via the Plough Road automated vehicular and pedestrian railway crossing, would in safety terms be neutral.
- 5.33.19 Unless substantive evidence can be presented to the Inspector at the TWAO inquiry which demonstrates the proposed diversion of E45 to be too onerous, or less safe, in contradiction to the conclusions of the Planning Inspector, then there is a clear benefit of endorsing the closure in meeting the District Council's objective to help deliver the 5-year supply of housing.
- 5.33.20 It appears that the Parish Council's reason for objection to the proposal is that the diversions would take pedestrians away from countryside routes onto a network of footways and in some cases roads which do not have footways at all and that the proposal would increase the length of a journey compared with the current routes.
- 5.33.21 Most of the views over open countryside from the current paths would be retained by the proposed alternative. There is no visual merit to that section of FP EX/165/8 between Birch Avenue and the railway line. Network Rail have made no objection to the notable commercial aspect of the permitted development which means that the open aspect to the east of FP EX/165/8 on the south side of the railway would be lost in any event.
- 5.33.22 There is an added planning merit in achieving closure by 2019 in that Tendring Council's current 5-year land supply allocations can be protected. The Government intends to increase housing numbers in the Tendring District, which makes deliverability of this site more important.

## **The Cases for the Objectors**

### **Great Bentley Parish Council (OBJ 070)**

- 5.33.23 The current route links Great Bentley with Aingers Green and it is possible to walk between the two without having to walk alongside a road. The proposed diversions would require users to detour out onto Plough Road alongside heavy traffic which is a much less attractive prospect. The section of the footpath proposed for closure is some 225m. The diversion is some 475m, and thus 100% longer.
- 5.33.24 With regard to E46, this crossing is convenient to the residents of Pine Close, Birch Avenue and connected roads. This is a significant enclave of

the village, comprising some 200 plus dwellings. Some have views across the railway line of attractive farmland and distant woods, and all are within easy walking distance of paths taking them to the south, clear of any roads. A significant detour of almost three times the current distance would result from the closure of the crossing.

- 5.33.25 The suggested alternative route for both crossings would require users to walk along roads that have no footway including the area around the station and the route into the carpark where commuters and others maybe hurrying to get their vehicles parked in time for the train. In addition, the route across the railway at the vehicular crossing has no safe provision for pedestrians; the areas where walkers are encouraged to cross is simply marked out of the vehicular carriageway with nothing more than a white line offering no protection at all.
- 5.33.26 The sightlines at both crossings are good in all directions; MSLs could be installed at the crossings to assist users as they have been installed at Frating Abbey crossing.

### **The Ramblers (OBJ 148)**<sup>236</sup>

- 5.33.27 The proposal would reduce the number of north-south crossing points of the railway in Great Bentley from three to one at a time when housing development is driving a growth in the village. Network Rail has clearly failed to fully appreciate how its proposals will impact on pedestrian accessibility to the village as a whole. Although the Irwin development is limited to 25 houses out of 150 unless E45 is closed, that development did not consider the impact of the closure of E46.
- 5.33.28 The diversionary route is not a sufficient replacement for the existing options over E45 and E46. Mr Coe's evidence was that walks in and around the area were popular due to Great Bentley village green and that a publicised Ramblers walk takes in both the crossings and the village green. Mr Coe explained that around 20 people join this walk and that they join partly because of the attraction of the village green. Emphasis was also placed on the 'off-road' character of the existing routes and that ramblers would seek to "avoid roads at all costs.". On the basis of his local understanding of these crossings and his experience as a walker, Mr Coe raised concerns about people choosing to use their cars instead of walking as a result of this proposal.
- 5.33.29 Mr Coe is not alone in using these parts of the ROW network. The census recorded around 40 people as using E45 and 24 using E46 during the 9-day period. Instead of these off-road walks, these users will need to walk alongside Plough Road, next to the traffic, noise and fumes.
- 5.33.30 Depending on their origin and destination, they may also need to walk a considerable extra length, particularly if they are looking to reach the village green to the north from a south-easterly approach. For these

---

<sup>236</sup> OBJ 148 W-011 & W-015 Mr Coe

reasons, the alternative route is not suitable and convenient and cannot justify the closure of these crossings (neither of which have had any reported misuse or poor behaviour and both which have compliant sightlines).

- 5.33.31 In addition, the Ramblers fail to understand why the path over E45 could not be routed through Great Bentley train station, across the station bridge. This would be a useful compromise solution to allow for closure of that crossing. According to Mr Kenning, Greater Anglia would not agree to more people walking along the station platform due to safety concerns and it would be difficult to regulate ticket checks if the bridge were used in this way. Neither of these reasons are acceptable, particularly as a number of Network Rail's documentation clearly envisions that diverted users will, in reality, utilise the station bridge.
- 5.33.32 Lastly, the Ramblers note that Mr and Mrs Irwin support Network Rail's case for E45 and that Mr Glegg has made submissions on their behalf. This refers to a previous Inspector's decision in APP/P1560/W/15/3141016 which granted permission to a development of up to 150 dwellings on the Irwins' land. That development is, however, subject to a Grampian condition limiting build out to up to 25 dwellings unless and until level crossing E45 is closed.
- 5.33.33 The Inspector's decision<sup>237</sup> makes clear that there are two possible ways through which E45 could be closed and the Grampian condition discharged; either by way of diversion or through the construction of a footbridge. No evidence had been presented to demonstrate that the footbridge could not be funded from the proceeds of the development. The Inspector considered that the development would have a neutral safety impact because of the Grampian condition to be imposed. Contrary to Mr Glegg's statement, the Planning Inspector made no finding as to the safety of any diversion via Plough Road. That issue was a matter falling outside the scope of the planning inquiry.
- 5.33.34 Nor is the current proposal, by Network Rail, to close E45 via diversion the only means by which the Grampian condition can be discharged (and the remaining 125 dwellings built). The provision of a footbridge would also allow for this housing benefit to be realised.
- 5.33.35 Of course, were Network Rail to be successful in closing E45 by way of diversion through this Order, Mr Irwin would be able to discharge the Grampian condition, thereby realising the full development potential of the site without having to pay the expected £1million - £2million for a footbridge. The Ramblers submit that Mr Glegg's statement must be considered in light of this.

---

<sup>237</sup> OBJ 148 inquiry document 13

## **Inspector's Conclusions**

### **SOM4(a) The likely impacts on landowners, 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**

- 5.33.36 The creation of a new footpath between Plough Lane and the residual section of FP EX/165/8 is likely to have a detrimental impact upon the owners of the land crossed by it, in particular those owners of that part of the business park over which the new right of way would be created. The proposal is also likely to have a positive impact upon those whose land is crossed by those parts of FPs EX/165/8 and EX/165/12 which would be extinguished.
- 5.33.37 Access to property would not be diminished as a result of the proposal; it is highly likely that those owning or occupying property adjacent to the footpaths on Birch Avenue and Pine Close would experience less disturbance with the cessation of members of the public using the footpaths to access the crossings.
- 5.33.38 The diversion of FP EX/165/8 and the closure of E45 would discharge the condition imposed upon the proposed housing development to the south of the railway and would permit the development of 150 houses on the site; there would be a beneficial impact upon the ability of the developer to execute the planning permission in full.
- 5.33.39 The loss of a part of the local public rights of way network and the element of choice that E45 and E46 provides to the public is of concern to the Ramblers. The proposed alternative route utilising existing public highways and public rights of way would provide an alternative means by which those wishing to travel north-south across the railway could do so by utilising the CCTV crossing at Plough Road. The question which remains is whether that suggested alternative would be suitable and convenient for current users of the crossings.
- 5.33.40 Although there would be some adverse impacts upon a number of landowners arising from the proposals, there do not appear to be impacts in this respect which could not be addressed through detailed design or compensation.

### **SOM4(b) Impacts on other users**

- 5.33.41 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate. The closure of E45 would facilitate the introduction of 10-car trains to the services on this line without those trains 'sitting back' over the crossing when calling at Great Bentley.



**SOM4(c) Impact on flood risk**

5.33.42 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.33.43 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites; consequently, there would be no impact upon such sites arising from the proposal.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.33.44 No submissions were made which suggested the proposal would have any adverse impact upon the landscape. Although new fencing will be installed along both the northern and southern sides of the railway in the vicinity of E45 and E46 if the proposal is approved, this would be a renewal of the existing boundary fence and will be required to prevent future trespass upon the railway.

5.33.45 As the proposed new footpath between Plough Road and the residual part of FP EX/165/8 is adjacent to the proposed housing development and also within the existing business park, there would be no adverse impact upon agricultural or silvicultural activity.

**SOM4(g) Any other environmental impacts including noise and health**

5.33.46 No representations were made regarding these matters.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.33.47 The footpaths served by E45 and E46 provide links between Great Bentley and the (relatively) undeveloped open countryside to the south via the local PROW network. The camera survey suggests that both crossings are in daily use by a small number of users and the oral evidence given by Mr Coe, together with the consultation responses suggests that use of the crossings is primarily associated with recreational use.

5.33.48 The Ramblers contend that the proposed alternative route was not suitable as it ignored the relevance of the village green to users such as those in organised walking parties. Such groups welcomed the opportunity to walk 'off-road' and the crossing provided the opportunity to do that on walks commencing at the village green. The ability to access open country from residential areas north of the railway was also an issue of concern for the Parish Council. Walking on footways adjacent to Plough Lane or other roadways was considered inferior to rural or semi-rural footpaths.

- 5.33.49 The proposed diversion would not restrict organised walking groups from using the village green as a starting or finishing point for a walk to and from Aingers Green or other destinations as the proposal would maintain a north-south link over the railway. That link would however be via the CCTV level crossing at Plough Lane, or via the pedestrian footbridge over the railway.
- 5.33.50 Whilst the additional distance required to walk between the southern end of FP EX/165/12 and Pine Close would be around 750m, for anyone wishing to access the village green as a destination, the additional distance would only be around 370m. Anyone approaching E45 or E46 from Aingers Green will have walked at least a kilometre before arriving at the proposed alternative route. In such circumstances, the additional distance which would be required to arrive at the village green is unlikely to inconvenience recreational walkers. The same would apply for those setting out from the housing estate to the north of the railway who intended to walk to Aingers Green; an additional 300m is unlikely to cause any inconvenience.
- 5.33.51 The footway along Plough Lane and other estate roads provides pedestrians with a safe means of travel segregated from passing vehicular traffic. The proposed alternative is therefore relatively safe for pedestrians to use. At the Plough Lane crossing, the only means of separation from vehicular traffic is a white line on the road surface to indicate the presence of a footway. Although the Parish Council considered this to present a risk to those users who would be directed to Plough Lane from E45 and E46, this crossing is used by around 350 pedestrians per day without incident. For those users who would prefer not to cross without some segregation from vehicular traffic, the footbridge at the station would provide an alternative means of crossing the railway.
- 5.33.52 Although it was contended that the proposed diversion would result in more people undertaking a journey between Great Bentley and Aingers Green by car, the northern part of any journey between the two villages using either E45 or E46 is essentially urban in nature. The proposed diversion to Plough Lane will not result in the quality of the walking experience being diminished as access to the village green is retained and the opportunity to experience the open countryside south of the village would be unchanged.
- 5.33.53 Although the Ramblers contend that the proposed diversion was not the only way the Grampian condition on the proposed housing development could be discharged, it is nonetheless a way by which that condition could be discharged.
- 5.33.54 The Equality and Diversity Overview report rating for E45 and E46 was green and no DIA was carried out. The increased distance a user would have to travel might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossings, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion.
- 5.33.55 The proposed route would be step free (for those choosing not to use the footbridge at Great Bentley station) and would offer greater accessibility than the current crossings which have stiles and steps to negotiate. The

inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Overall Conclusion**

- 5.33.56 Considering all the above, and all other matters raised in relation to E45 Great Bentley and E46 Lords No.1, I conclude that the Secretary of State should include E45 and E46 within the Order as the proposal would provide existing users of the crossings with a suitable and convenient alternative means of crossing the railway.

## 5.34 **E47 Bluehouse**

### **Description of the crossing**

- 5.34.1 E47 Bluehouse is located on the Thorpe-le-Soken to Walton-on-the-Naze railway line approximately 270m east of Pork Lane and carries FP EX/164/16 over the railway. The village of Kirby Cross lies to the east of the crossing with Great Holland to the south. The area surrounding the crossing is predominantly agricultural land with scattered hamlets and dwellinghouses located along the roads which pass through the area.
- 5.34.2 Footpath EX/164/16 is an unsurfaced path which commences to the west of Kirby Cross on Thorpe Road and runs in a generally south-westerly direction through an area of woodland before crossing arable fields to the north of the railway. The unsurfaced path continues south-westerly from the railway partly as a cross-field and partly as a field edge path, terminating on Pork Lane at a point opposite Birch Hoe Farm. The crossing is accessed by stiles in the railway boundary fence with crossing boards between the rails to provide a level surface for pedestrians. The crossing boards do not extend to the decision points; pedestrians have to cross the ballast of the railway between the decision point and the crossing boards.
- 5.34.3 E47 is a passive level crossing requiring pedestrians to stop, look and listen for approaching trains. The railway comprises a single line of rails and carries passenger trains at a line speed of 50mph. The ALCRM score for this crossing is D10<sup>238</sup>. A 9-day camera census was carried out in July 2016, which showed 23 adult pedestrians using the crossing over this period of which 12 users were railway personnel<sup>239</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposal**

- 5.34.4 It is proposed to close E47 to all users and to extinguish the PROW over the crossing and that part of FP EX/164/16 to the south of the railway to prevent the creation of a cul-de-sac. On the north side of the railway it is proposed to create a new PROW to run parallel with the railway boundary fence between the crossing and Pork Lane.
- 5.34.5 Those users heading north along Pork Lane would be diverted away from the existing FP EX/164/16 along the verge alongside Pork Lane to the automatic half-barrier (AHB) crossing. Having crossed the railway at the AHB crossing, users would then be diverted east along a new 2m wide unsurfaced field edge path to the residual length of FP EX/164/16 and onwards to Thorpe Road. The infrastructure at the crossing would be removed with fencing being installed either side of the railway to prevent trespass. In addition, a stock-proof fence 1.35m in height would be erected

---

<sup>238</sup> NR31/5 risk assessment dated 11 June 2018

<sup>239</sup> NR25 3267-LON-E47 page 6

to separate the proposed footpath from the remainder of the third-party field through which the path would run.

### **The Case for Network Rail**

- 5.34.6 The approaches to the crossing are along unmade field paths and the stiles in the railway boundary fence and the incomplete crossing furniture make the path difficult for those with impaired mobility or sight to use the crossing. The location and nature of the crossing, together with the user census data and responses from public consultation suggest that the crossing is used by a limited number of people to access the wider public rights of way network.
- 5.34.7 Following a scoping study, a DIA was not considered necessary due to the restricted accessibility of the existing crossing. The proposed alternative is 50m longer than the existing route and maintains the north – south connectivity provided by the existing crossing. A stage 1 RSA had not identified any issues with the use of Pork Lane as part of the proposed diversion; the RSA team would have made their assessment on the submitted plans and on-site observations; they would not be relying solely on the written brief. Users of the current path heading south to FP EX/164/10 have to walk along Pork Lane.
- 5.34.8 The marked pedestrian footway at Pork Lane AHB on the east side of the crossing together with areas to the north and south of the crossing which would provide safe waiting areas when the crossing barriers are in operation would enable pedestrians to cross the railway in safety. Pedestrians emerging from the proposed path would be able to see the warning signs for the AHB crossing and the half barrier on the north side of the crossing would provide additional protection.
- 5.34.9 It was recognised that although the current crossing was subject to limited use, an alternative route was required to be provided in order for E47 to be closed. Additional fencing was provided for as part of the proposal to address Mr Roberts' concerns regarding the potential for trespass from the proposed footpath. The compensation provisions would apply in respect of the creation of the new PROW, and temporary use of, third party land whilst creating the new footpath. The new footpath would be maintained by Network Rail for the first twelve months after which maintenance responsibility would pass to the Highway Authority.
- 5.34.10 Network Rail maintains that it has struck the balance correctly between the needs of existing users of the level crossing and the interests of affected landowners in respect of its proposals for E47. The Order may properly be confirmed without modification.

### **The Case for the Objector**

#### **Mr D R & Mrs V R Roberts (OBJ 101)**

- 5.34.11 Network Rail claim four reasons for seeking to close E47: (a) improving the safety at level crossings for all users; (b) reducing delays to trains,

pedestrians and other highway users; (c) minimising the operating and maintenance cost of the railway; and (d) delivering a more efficient and reliable railway on behalf of the UK taxpayer.

- 5.34.12 There have been no safety incidents at this crossing in recent years and probably there has never been any safety incidents since the line was built in 1883. If user safety was an issue, then a telephone system could be installed of the kind that exists at Pork Lane AHB. No evidence has been provided that this crossing has contributed to delays on the railway; Network Rail admit that there have been no incidents of misuse or accidents at this crossing.
- 5.34.13 Closing the crossing will not affect the operating cost of the railway. The cost of future maintenance will simply be transferred to ECC as the highway authority. One train passes over E47 only once every thirty minutes. Network Rail has given no indication how reliability or efficiency will be improved.
- 5.34.14 The proposed footpath will create problems with pedestrians not keeping to the footpath, dogs allowed to roam over the crops and defecate therein and will pose a health risk to any livestock grazing the field. Network Rail does not manage the vegetation growing on its land other than at lineside; if uncontrolled, brambles, gorse and so on would obstruct the proposed path and result in pedestrians walking anywhere. There are concerns that the proposed fence will not keep pedestrians on the footpath once it is overgrown. The fence will require maintenance and periodic renewal; the burden of such costs should not be placed upon the adjacent landowner.
- 5.34.15 The proposed footpath will cause pedestrians to exit onto Pork Lane, partly single carriageway, close to a blind corner. Vehicles, cars, double decker buses, lorries, motor bikes all use this lane, some of which travel at speed. The RSA brief developed in November 2015 was incorrect; there was no bridge on Pork Lane – the veracity of the RSA findings was questioned. The current footpath using crossing E47 allows much safer access and visibility elsewhere onto Pork Lane.
- 5.34.16 On safety at the railway, there is total lack of railway fencing along the whole length of the proposed footpath. Anybody including children can easily access the railway track, compromising their safety. Even if adequate fencing is erected there is little evidence that this short length of single track will have any priority for maintenance.
- 5.34.17 It is submitted that E47 and the existing footpath should remain open.

### **Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

- 5.34.18 Access to property would not be affected by this proposal, nor would it have any adverse impact upon utility providers or statutory undertakers. On the south side of the railway, the closure of E47 and the extinguishment of part of FP EX/164/16 would remove the burden of the right of way over the land.
- 5.34.19 On the north side of the railway, the closure of E47 would have an adverse impact upon Mr Roberts' landholding as the proposed alternative footpath would be created wholly on his land. Part of FP EX/164/16 which leads to the railway crosses Mr Roberts' field; the risk of transfer of disease from dogs to livestock identified will already exist, although that risk is likely to be increased due to the additional footpath. The burden on the field and the impact upon agricultural operations would be increased by the proposed path.
- 5.34.20 To address some of the issues raised by Mr Roberts, Network Rail propose to segregate the new footpath from the remainder of Mr Roberts' field by means of a stock-proof fence. Maintenance of the new footpath would be the responsibility of the Highway Authority after the initial 12-month period of maintenance by Network Rail. A commuted sum will be paid by Network Rail to the Highway Authority for this purpose. The nature of any fence required by Mr Roberts and the extent of fencing which will need to be erected to prevent trespass on to the railway from the north are matters that could be dealt with under detailed design. The adverse impact upon Mr Roberts' land could also be addressed under the provision for compensation.
- 5.34.21 There do not appear to be impacts upon the landowner which could not be dealt with by means of detailed design and compensation.

#### **SOM4(b) Impacts on other users**

- 5.34.22 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.34.23 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.34.24 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites; consequently, there would be no impact upon such sites arising from the proposal.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.34.25 No submissions were made which suggested the proposal would have any adverse impact upon the landscape. Although new fencing will be installed

along both the northern and southern sides of the railway in the vicinity of E47 if the proposal is approved, this would be a renewal of the existing boundary fence and will be required to prevent future trespass upon the railway.

- 5.34.26 As noted above, the creation of a new footpath to the north of the railway boundary is likely to impact upon Mr Roberts' agricultural activity and upon his use of the land. That part of FP EX/164/16 to be extinguished and the proposed alternative path does not pass through woodland; it is unlikely there would be any adverse impact upon silvicultural activity.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.34.27 No representations were made regarding these matters

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.34.28 E47 and FP EX/164/16 provide a link between the villages of Kirby Cross and Great Holland although any such journey requires a pedestrian to undertake some road walking between the public rights of way which would comprise such a journey. The 9-day camera survey suggests that the crossing is lightly used by the public for recreational purposes.
- 5.34.29 The main issue arising between the parties related to the use of the Pork Lane AHB crossing and that section of Pork Lane between the AHB crossing and the current southerly terminal point of FP EX/164/16.
- 5.34.30 The RSA had not identified any issues with pedestrians using the AHB crossing or Pork Lane to the south of it. Although the RSA brief refers to a 'bridge' being present on Pork Lane, this is likely to be a typographical error as the railway crosses the road on the level at this point.
- 5.34.31 Pedestrian users of Pork Lane are provided with a designated area within the vehicular crossing marked out by solid white lines. There is adequate space either side of the crossing for pedestrians to wait if the AHB crossing is in operation and there is a verge between the AHB crossing and the southern end of FP EX/164/16 in which pedestrians can walk or onto which they could step off the road if walking along the carriageway to avoid contact with vehicular traffic, including those travelling at speed. These conditions are not dissimilar to those which recreational walkers currently experience when travelling between FPs EX/164/16 and EX/164/10 to the south.
- 5.34.32 The proposed footpath would increase journey distances by approximately 50m with a commensurate increase in journey times; it is unlikely that recreational users would be inconvenienced by such an increase. The proposed alternative would provide a link to the AHB crossing at Pork Lane which would maintain a north – south means of crossing the railway while maintaining links to other public rights of way.



5.34.33 The scoping study suggested that a DIA was unnecessary due to the limitations on accessibility of the existing crossing. The Equality and Diversity Overview report rating for E47 was green and no DIA was carried out. Crossing the railway on the level at Pork Lane AHB crossing is likely to be more accessible to some users compared with E47 and some users may consider the additional safety precautions present at Pork Lane to be beneficial.

5.34.34 The impact of the increased distance arising from the proposal might be an issue for some users but taking into account the routes as a whole there should be no disproportionality introduced by the proposed closure of E47. The inclusion of this crossing in Order would not lead to a likelihood that the PSED would not be met.

### **Overall Conclusion**

5.34.35 Considering all the above, and all other matters raised in relation to E47 Bluehouse, I conclude that the Secretary of State should include E47 within the Order as the proposal would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.35 **E48 Wheatsheaf**

### **Description of the crossing**

- 5.35.1 E48 is located on the Manningtree to Harwich railway line to the west of the village of Wrabness and carries FP EX/184/19 over the railway. The village of Bradfield lies to the west, the River Stour to the north with scattered hamlets and dwellinghouses located along the roads to the south.
- 5.35.2 The area surrounding the crossing appears to be arable or pasture farmland although the crossing is located in a parcel of woodland known as Brakey Grove. Footpath EX/184/19 is an unsurfaced path which commences on Wheatsheaf Lane and runs in a generally south-easterly direction parallel to a small watercourse towards Brakey Grove and E48. South of the railway, the footpath runs within Brakey Grove close to its eastern edge to terminate on Station Road. The footpath is accessed at the point where Station Road begins to bend to the right then to the left as it travels north to meet Church Road.
- 5.35.3 Within Brakey Grove the railway is built up on an embankment and the crossing is approached from either side by a flight of steps with handrails having been provided to assist with negotiating the gradient of the embankment. On the north side of the railway there is a decking path between the top of the flight of steps and the crossing point. Kissing gates are located in the railway boundary fence and there is some decking furniture between the live rails although this does not extend across the 'six-foot' between the live rails or to the decision points either side of the tracks.
- 5.35.4 E48 is a passive level crossing requiring pedestrians to stop, look and listen for approaching trains. The railway comprises two lines of rails and carries passenger trains at a line speed of 60mph. The ALCRM score for this crossing is D7. A 9-day camera census was carried out in July 2016, which showed 27 adult pedestrians using the crossing during this period<sup>240</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposal (including modifications suggested at the inquiry)**

- 5.35.5 It is proposed to close the crossing to all users and to extinguish the PROW over it. It is also proposed to extinguish that part of FP EX/184/19 from a point approximately 70m north of the crossing to its junction with Station Road.
- 5.35.6 At the inquiry there was discussion between Network Rail and ECC regarding the retention of FP EX/184/19 to the south of the railway boundary to provide for continued access to Brakey Grove. It was acknowledged that this would result in the creation of a cul-de-sac. Mr

---

<sup>240</sup> NR25 3267-LON-E48 page 6

Kenning confirmed that there was no reason why the section of FP EX/184/19 could be not retained beyond the southern railway boundary if the Secretary of State was minded to consider that the proposed extinguishment was too extensive<sup>241</sup>. It was Network Rail's case that the retention of part of FP EX/184/19 would not affect the appraisal of whether the proposed diversion route was a suitable and convenient replacement for existing users of the level crossing.

- 5.35.7 It is proposed that on the north side of the railway users would be diverted east along a new 2m wide unsurfaced field edge footpath within third party land to connect to Church Road to the north of Church Road overbridge. The landowners affected questioned why the line of the proposed footpath was shown on the northern edge of the 5-metre order limit plot 04<sup>242</sup> and not closer to the railway boundary. Network Rail gave consideration to this point during the inquiry and has submitted a revised plan<sup>243</sup> which addresses this particular concern of the objectors should the Secretary of State be minded to include the closure of E48 within the order.
- 5.35.8 Those users of FP EX/184/19 wishing to head south would follow the proposed new path and then use the verge at the side of Church Road and Station Road to reach the southern end of FP EX/184/19. The proposed diversion would increase journey distances by approximately 730m.
- 5.35.9 Level crossing infrastructure would be removed, and the railway boundary fence would be renewed to prevent trespass onto the railway.

### **The Case for Network Rail**

- 5.35.10 Following a scoping study, a DIA was not considered necessary at this crossing due to the current restricted accessibility of the existing crossing route.
- 5.35.11 The footpaths in the area are rural routes, considered to be used for recreational walking purposes with the estuary area to the east of the crossing being a likely destination for users; the proposed diversion would provide a more direct link to this area. The east – west direction of the diversion is intended to provide a link to the railway station for those accessing the countryside by rail. Pedestrians wishing to access long distance footpaths with estuary views would have the walking distance reduced by approximately 480m to reach FP EX/184/3 and by approximately 180m to reach FP EX/184/5. For users approaching the estuary area from south of the railway the diversion route would be approximately 700m longer.
- 5.35.12 It is noted that the coastal PROW route from Bradfield towards Ramsey is approximately 6,500m in length and the majority of footpaths in the area form part of long-distance walks. The proposed alternative footpath allows

---

<sup>241</sup> To the south of points P281 or P287B on replacement sheet 40 dated 05 12 2018 (see also NR 157)

<sup>242</sup> Replacement sheet 40 revision date 22 08 2018

<sup>243</sup> Replacement sheet 40 revision date 05 12 2018

circular and recreational walking in and around Wrabness and offers good connectivity to the wider footpath network. The alternative step-free route may encourage walking for people with reduced mobility.

- 5.35.13 A Stage 1 RSA did not identify any concerns with the proposed use of Station Road/Church Road<sup>244</sup>. A road safety check undertaken by ECC raised concerns about the use of the southern section of Dimbolls Hall Lane where the verge was relatively high and at Church Road where a ditch had to be crossed to reach the road. Ms Tilbrook confirmed that it would be necessary to work with ECC during detailed design to ensure that there was space for pedestrians to step off the carriageway, that the verge might require some reprofiling as opposed to just the cutting back of vegetation, and that the ditch would require culverting.
- 5.35.14 A further concern was raised, orally, by Mr Seager for ECC regarding visibility at the southern end of the diversion route. Ms Tilbrook confirmed in her evidence that she was satisfied that sufficient sight lines could be achieved in accordance with the Highway Code.
- 5.35.15 ATC data was collected on Station Road west of the junction with Church Road, which showed an average 2-way daily traffic flow of 135 vehicles and 85<sup>th</sup> percentile speed of vehicles of 31.5mph where the posted is 40mph<sup>245</sup>. Having regard to the volumes and speed of traffic on the road here, Ms Tilbrook confirmed that she was satisfied that users could safely walk in the carriageway and step off the carriageway as necessary. Similarly, she did not consider that there would be an issue with visibility for users passing over the bridge having regard to the speed at which vehicles would be travelling in this location. It is considered that rural road walking is undertaken at present within the area to access the network of footpaths and Station Road is suitable for use by the public as part of the diversion.
- 5.35.16 Overall, it is submitted that the proposed diversion route would be a suitable and convenient replacement for existing users of the crossing. Others clearly disagree. There is also, clearly, a disagreement as to comparative 'amenity' values of the current route as opposed to the proposed replacement route. However, Network Rail maintains that the Secretary of State may properly conclude, for the reasons given in evidence, that a suitable and convenient replacement will be provided for users of this crossing.
- 5.35.17 In terms of the impact on the landholding to the north, Mrs Hutley queried why the proposed line of the PROW had been drawn out into the field, rather than being closer to the field boundary. Ms Tilbrook explained that it had been drawn to follow natural features on the ground. Subsequent to consideration of E48 at inquiry, a further site visit had been undertaken and a revised Order plan has been produced which pulls the proposed line of the PROW closer to the boundary. Network Rail has confirmed that it is

---

<sup>244</sup> NR16 report 367516/RPT016 revision B

<sup>245</sup> NR32/2 tab 1 p27

promoting the modification to the Order and has consulted on it accordingly.

- 5.35.18 Mr Kenning also confirmed that there were further measures that could be explored during detailed design to mitigate the concerns expressed by Mr and Mrs Hutley regarding the impact of the new PROW on the use of their field for horses – including the opportunity to provide segregation by way of fencing (if required) and that infrastructure could be introduced to reduce risk of vehicular trespass at the point where the new footpath would meet Church Road.
- 5.35.19 Network Rail maintains that it has struck the balance correctly in respect of its proposals for E48. The Order may properly be confirmed with the proposed modification.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Andy & Gill Moffat (OBJ 125)**

- 5.35.20 The crossing is used by the objectors and other residents as a short cut from Station Road to Wheatsheaf Lane as part of a regular dog walking route. There have been no accidents or misuse of the crossing according to Network Rail. Visibility at the crossing is good in either direction. This crossing has recently been upgraded and improved with new steps and handrails.
- 5.35.21 The new footpath would run immediately behind the back garden and raises issues of personal safety and security. Alternative routes to connect with paths near Foxes Farm or wholly along Church Road should have been considered.

#### **Robin Cole (OBJ 158)**

- 5.35.22 Negotiations were in progress with Mr Hutley to purchase part of the field to the rear of the property to extend the garden; there was a possibility that the new footpath would run through that additional garden space. The proposed footpath would cross a soakaway drain from the property; obtaining permission to undertake maintenance could be difficult to obtain and disruptive to path users. The creation of a footpath to the rear of the property has implications for safety and security of the property. The proposed route makes no sense as it duplicates a journey that can be made using Church Road. There are good sightlines at the crossing and there have been no accidents there. Network Rail have upgraded the crossing in recent years, indicating use was intended for many years.

#### **Kate Kincaid (OBJ 184)**

- 5.35.23 Horse riders in Wrabness have been fortunate to have been permitted to ride in Mr Hutley's field for over 20 years. This is a vital amenity as there are few bridleways in the area and other landowners are not well disposed to horse riders. The re-routing of the footpath would remove the amenity

enjoyed by many; no mention is made in the proposals as to how horse riders would be compensated for the loss of this valued amenity.

**Helen Fulbeck (OBJ 191)**

- 5.35.24 The existing footpath is used marginally and in 30 years of residence very little use has been observed as there are other far more enjoyable walks to be had in Wrabness. Use on horseback of the proposed route in Mr Hutley's field has been enjoyed for the past 30 years and it would be extremely upsetting to lose this access.
- 5.35.25 The proposed footpath would duplicate access along Church Road which is a quicker and more enjoyable walk. As there is little use of the footpath, a solution would be to close the footpath altogether despite considerable money having been spent on the crossing in recent years.

**The Case for the Objectors who did appear at the inquiry**

**Mr & Mrs Hutley (OBJ 085)**

- 5.35.26 Complaint is made regarding the consultation process undertaken by Network Rail. Despite many years of close co-operation in providing access to E48, no formal consultation was undertaken during 2016, nor were notices of the proposal posted on site. The book of Reference (as originally published) records the owner of the land as being 'unknown'. Requests for details of land ownership were received in January and February of 2017. Formal notice was served on 5 May 2017, leaving six days before the closing date for objections to be made. The consultation process has been inadequate, disorganised and unfit for purpose.
- 5.35.27 The existing footpath provides connectivity between Wheatsheaf Lane and Dimbolls Hall Lane; walkers to the south-west of Wrabness have access to a limited public rights of way network; the closure of the Brakey Grove footpath would reduce access to the network to the north of the railway and would deprive walkers of a walk through woodland.
- 5.35.28 Walkers to the north of Wrabness have access to an extensive network of paths with Church Road providing connectivity to Wrabness Nature Reserve, Essex Way, Wrabness Church, the House for Essex, the village shop, station, estuary and foreshore. Church Road is convenient, suitable and safe for walkers and is used by the Ramblers as part of the annual walk from Manningtree to Wrabness. People will not want to walk at the rear of two houses and a railway line to access these amenities.
- 5.35.29 The proposed route runs on the edge of an arable field used by local horse riders with permission. The uphill stretch between the crossing and Church Road is used as a gallop and is incompatible with pedestrian use. If the footpath is created, the permissive use of the field for horse riders would be withdrawn; it is not in the public interest to have horses using an already popular rural lane.

- 5.35.30 Visibility along Church Road is obscured by a hedge and a bend in the road which would prevent walkers from seeing oncoming traffic. Safety on the road would also be compromised by horses using the road instead of the field. A 2m access to the field from Church Road would facilitate access by fly tippers and hare coursers; it would not be possible to block such an access to maintain security on the farm.
- 5.35.31 An alternative east – west route is not desirable, required, suitable or convenient. The use of the field by horse riders complements the amenity of the existing east – west route making Church Road safer and more enjoyable for walkers. The proposal diminishes the sparse footpath connectivity between the south-west of the village and the amenities found to the north of the railway.

### **Wrabness Parish Council (OBJ 127)**

- 5.35.32 Given the good visibility of oncoming trains at E48, the density of train movements (between one per hour and three per hour) and relative train speed the Parish Council submit this is a safe crossing point for pedestrians. There are no reports in the press or within local knowledge of fatalities, accidents or incidents involving pedestrians at E48.
- 5.35.33 There have been no announcements about increasing the frequency of passenger services on this branch line. There is no expectation of early major freight expansion at Harwich Port and Tendring District Council has discounted this in the new draft Tendring District Local Plan for the period to 2033 published in June 2017.
- 5.35.34 Footpath EX/184/19 is routed through an attractive Ancient Woodland and Local Wildlife Site, over the railway and onwards through fields to W heatsheaf Lane. It provides a safe and convenient walking route within Wrabness and beyond, linking with the footpaths leading to the adjacent villages of Wix and Bradfield. It serves as a feeder route for those seeking the Essex Way, the shoreline or inland destinations.
- 5.35.35 The closure of E48 will fracture a footpath which links two parts of the village and destroy a convenient walking route for residents to visit friends and local businesses. Closure of the E48 crossing will mean less walking and higher car use and diminished utility from our footpath network. The Network Rail proposal for an alternative footpath route in an east -west direction will not compensate for the loss of the north - south through footpath route across the railway in terms of utility for local residents.
- 5.35.36 The new section of footpath would duplicate the existing Essex Way long distance footpath and Church Road which are generally aligned east – west and are very popular routes with stunning views across the Stour Estuary and beyond. In contrast the proposed footpath route along lower lying land with contained views would be less attractive for users. The proposed footpath route does nothing to retrieve the loss of access and amenity of walking through Ancient Woodland south of the railway.

5.35.37 The Parish Council values the existing footpath along the south – north route axis through Brakey Grove and across the railway because it is a key link in the local footpath network. Closure of the rail crossing will diminish a valued off-road walking opportunity and access to varied landscape and habitat areas. The Parish Council consider the best outcome would be to retain E48 and make no changes to the footpath route either side of the railway.

**Essex County Council (OBJ 195)<sup>246</sup>**

5.35.38 The proposed alternative would require an additional 700m of road walking for those pedestrians approaching the railway from the south or for those wishing to travel south on FP EX/184/19. The current footpath runs in the direction of Wrabness Nature Reserve which is more directly accessible from FP EX/184/19 than the proposed alternative. The reserve leads to footpaths and bridleways which provide access to the salt marshes and beaches of the Suffolk Coast and Heaths AONB.

5.35.39 It was Mr Lee's evidence that the alternative route is unlikely to be used as it takes users a significant way in the wrong direction and requires negotiation of the bends at Dimbolls Hall Lane. The bends are narrow and are flanked on both sides by raised undulating banks with overgrown vegetation. In addition, the footway over the road bridge is narrow and affords little protection to walkers from passing vehicles. There is poor visibility at the proposed exit onto Church Road and a ditch to be crossed. Mr Lee stated that he did not feel safe using the alternative route.

5.35.40 Mr Seager was concerned that the verge banks were too high, that pedestrians cannot step off the carriageway and that neither cars nor pedestrians had adequate visibility, particularly in reference to the fact that walkers should walk facing the direction of oncoming traffic.

5.35.41 In cross-examination, Ms Tilbrook accepted that walkers should walk facing the direction of oncoming traffic and that this was not possible due to the physical obstruction presented by the verges. Ms Tilbrook's first response to this issue was that it related to the current maintenance, however later accepted after being taken to photographs in Mr Lee's evidence<sup>247</sup> that the problem at this location would require more than maintenance. Mr Seager in cross examination welcomed the suggestion of re-profiling the banks. ECC submit that this consideration had not yet factored into NR's proposals therefore the feasibility and costs of this additional work are not known.

5.35.42 ECC were particularly concerned with the loss of amenity at this location, Network Rail proposed that it would not object if access to Brakey Grove Wood via that part of FP EX/184/19 to the south of the railway was retained. In the event that this route remains in the Order this modification would be welcomed by ECC.

---

<sup>246</sup> OBJ 195 W3/1 Mr Lee; W5/1 Mr Seager

<sup>247</sup> OBJ 195 W3/APP 2 page 102



- 5.35.43 ECC submit that the alternative is not suitable within the definition of para 4 of NR 135 as the proposed route is not appropriate for the purpose served by the existing crossing; the alternative takes walkers in a different direction along a route of a completely different character. Neither is the route convenient as it does not fit well with the user's plans to travel easily in a north west direction to local destinations such as the Nature Reserve.
- 5.35.44 In addition, the length of the route is a particular deterrent for use, the route does not feel safe for users, and the double bend is not in fact safe in its current topography, the route is not direct, and it does not maintain desire lines to destinations. It is ECC's submissions that the proposed alternative route is not suitable and convenient.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.35.45 If E48 were included in the Order without the retention of access to Brakey Grove, then the owners of the land to the south of the railway would find that the burden on the land imposed by the footpath would be removed. If, however, E48 were included in the Order with access to Brakey Grove being retained then the proposal would have no such impact. Retention of the footpath within Brakey Grove may have an impact upon Network Rail's proposed fencing on its southern boundary to prevent trespass.
- 5.35.46 The principal impact of the proposal would be upon Mr & Mrs Hutley's landholding to the north of the railway as it is within their field that the proposed footpath would run. In consequence of a question being raised about the location of the footpath, Network Rail have surveyed the field once more and have submitted an alternative route within the order limit boundaries running closer to the railway boundary.
- 5.35.47 It is submitted that the proposed footpath would adversely impact the current permissive use of the field by local horse riders as use by pedestrians and equestrians is incompatible and that equestrian use would cease if the proposal were implemented. This is clearly a concern expressed by other objectors. Concerns were also expressed about unauthorised access to the land for fly tipping and other criminal activity.
- 5.35.48 Network Rail submit that mitigation measures could be considered to manage any adverse impact the footpath might have upon other permissive use and to prevent unauthorised access. Whilst equestrian use by local horse riders takes place with the permission of the landowner, equestrian and pedestrian use co-exists on many public bridleways. Discussions regarding the nature and extent of mitigation works can be entered into at the detailed design stage.
- 5.35.49 There was discussion between the parties as to the use of the verges alongside Dimbolls Hall Lane due to their height. Although a narrow country

road, Dimbolls Hall Lane appears to be lightly trafficked with the majority of vehicles travelling below the advertised speed limit. Forward visibility around the bends on Dimbolls Hall Lane is likely to be sufficient to alert pedestrians of the approach of a vehicle. Reprofilng of the verges, if found to be necessary, is a matter that can be addressed as part of the detailed design stage.

- 5.35.50 There do not appear to be impacts in this respect which could not be dealt with through detailed design and the provisions for compensation.

#### **SOM4(b) Impacts on other users**

- 5.35.51 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.35.52 There is no indication that the proposal would have any impact on flood risk. Whilst the roadside ditch on Church Road will need to be culverted to allow access from the field, this action is unlikely to impede water flow.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.35.53 The crossing lies to the south of the Suffolk Coast and Heaths AONB and the east of Wrabness Local Nature Reserve (LNR); consequently, there would be no impact upon such sites arising from the proposal. Footpath EX/184/19 to the south of the railway runs through Brakey Grove an ancient semi-natural woodland. The proposed retention of this footpath would not impact upon the ancient woodland site.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.35.54 No submissions were made which suggested the proposal would have any adverse impact upon the landscape. Although new fencing will be installed along both the northern and southern sides of the railway in the vicinity of E48 if the proposal is approved, this would be a renewal of the existing boundary fence and will be required to prevent future trespass upon the railway.
- 5.35.55 As noted above, the creation of a new footpath to the north of the railway boundary is likely to impact upon Mr Hutley's agricultural activity and upon his use of the land. The retention of that part of EX/184/19 south of the railway through Brakey Grove is unlikely to have any adverse impact upon the management of the woodland. Equally, there would no adverse impact upon the wood if the footpath were to be extinguished.

**SOM4(g) Any other environmental impacts including noise and health**

5.35.56 No representations were made regarding these matters.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.35.57 E48 and FP EX/184/19 provide a north-west to south-east link between Wheatsheaf Lane and Dimbolls Hall Lane. Access to other public rights of way within the immediate area requires a pedestrian to undertake some road walking between the public rights of way which would comprise such a journey. The 9-day camera survey suggests that the crossing is lightly used by the public for recreational purposes.
- 5.35.58 The main issues arising related to the length of the proposed alternative route, the extent of additional road walking required for those approaching FP EX/184/19 from the south and the condition of road verges.
- 5.35.59 For those pedestrians wishing to travel west towards Wrabness LNR from the station or the village (or vice versa), the proposed alternative route would be shorter, more direct and would not require the user to walk along Dimbolls Hall Lane. For these users, the proposed route is unlikely to be inconvenient; the proposed footpath would provide an east – west connection within the parish.
- 5.35.60 Those users approaching from the south and wishing to travel north-west towards the nature reserve would find an increase in journey distance of around 700m. Most of this additional distance would be along Dimbolls Hall Lane and Church Road. Although the road is narrow, it appears to be lightly trafficked with the majority of cars travelling at less than the posted speed limit of 40mph. Anyone approaching FP EX/184/19 from the south is likely to have walked some distance on public rights of way or public carriageways and as part of a recreational walk in the area, an additional 700m is unlikely to present an inconvenience to such users.
- 5.35.61 It would appear that the suggested route is used as part of a circular walk undertaken by local residents without incident. Whilst re-profiling of the verges in the vicinity of the bends on Dimbolls Hall Lane is likely to assist users, the road appears to be used for recreational purposes in its current condition. The current condition of Dimbolls Hall Lane does not appear to inconvenience local dog walkers, and re-profiling of the verges as may be considered necessary is unlikely to inconvenience those approaching FP EX/184/19 from the south.
- 5.35.62 The proposed alternative route will retain the ability of residents to undertake circular walks within the area as they currently do albeit on a different alignment, as access to Wheatsheaf Lane and onward destinations would be unaffected. The proposed footpath would provide a step-free north-south link over the railway via Church Road overbridge without requiring users to cross the rails on the level.

- 5.35.63 At the point where the proposed footpath would emerge onto Church Road a culvert would be required to allow access over the ditch at the roadside. There is a flat verge at the side of the road which leads to the footway on the Church Road overbridge. Whilst the footway may be narrow, it separates pedestrians from vehicular traffic and links to the verge on Dimbolls Hall Lane. The proposed alternative routes would not inconvenience current users of the crossing.
- 5.35.64 The kissing gates and steps installed at E48 are likely to limit use of the path to those able to negotiate the flights of steps up and down the railway embankment. The Equality and Diversity Overview report rating for E48 was green as the existing infrastructure and condition of the approaches to the crossing are such that a DIA was not required at this location. Although the proposal would not impact upon the condition of the residual section of FP EX/184/19, the proposed alternative leading to Church Road would be step-free and is likely to be more accessible by a wider group of people than E48 currently is. Taking account of the routes as a whole there should be no disproportionality introduced by the proposed changes, and the inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

#### **Other matters - consultation**

- 5.35.65 Mr & Mrs Hutley contend that the consultation exercise conducted by Network Rail was inadequate and that as affected landowners formal notice was only served on them six days before the initial closing date for objections to be made. As set out above in paragraphs 1.2 to 1.11 above, the inquiry had to be adjourned to allow other parties on whom notice had not been served the opportunity to object or make representations in relation to the Order. Despite only initially having six days in which to submit an objection, Mr & Mrs Hutley were able to do so, and were able to participate fully in the inquiry. The adjournment of the inquiry on procedural grounds would also have enabled Mr & Mrs Hutley to prepare fully for the inquiry and I do not consider that their interests were prejudiced by Network Rail not serving the appropriate notices at the appropriate time.

#### **Overall conclusion**

- 5.35.66 Considering all the above, and all other matters raised in relation to E48, I conclude that the Secretary of State should include E48 within the Order as the proposal would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.
- 5.35.67 However, to bring into effect the proposed diversion, it would not be necessary to extinguish that part of FP EX/184/19 south of the Network Rail boundary. Although this would result in the creation of a cul-de-sac at the railway boundary, public access to Brakey Grove would be retained.
- 5.35.68 The Order will require modification by the deletion of points P281, P282 and P283 from column 3 of that part of part 1 of Schedule 2 which relates to FP

EX/184/19 and by deleting the line shown in replacement sheet 40 between points P281, P282 and P283.

## 5.36 **E49 Maria Street**

### **Description of the Crossing**

- 5.36.1 The footpath crossing is located on the Manningtree to Harwich Railway line approximately 187m south of Harwich Town railway station. The crossing provides a pedestrian link between Maria Street and other residential streets to the west of the railway and Ferndale Road and other residential streets to the east of the railway. The crossing is located within the built-up area of Harwich.
- 5.36.2 There are three lines of rails on the approach to Harwich Town, however only one line is in use currently; trains approach and depart from Harwich Town along this single line where the line speed is 25mph. The remaining two lines of rails would have served the sidings to the west of Harwich Town station; at Maria Street the operational boundary fencing runs across two of the three lines leaving only one set to be negotiated by pedestrians.
- 5.36.3 The area surrounding the crossing is comprised of residential streets with the Port and quays of Harwich a little to the north. The crossing provides a link between adopted roads and footways within Harwich.
- 5.36.4 The ALCRM score for the crossing is C2 with a near miss being recorded in March 2012 and an instance of misuse recorded in August 2016. This is a passive level crossing with wicket gates in the railway boundary fence where pedestrians are required to stop, look and listen for approaching trains prior to making a judgement as to whether it is safe to proceed.
- 5.36.5 A 9-day camera census between 9 July and 17 July 2016 recorded a total of 2,037 pedestrians using the crossing. This figure included 351 accompanied children, 65 unaccompanied children, 14 were elderly, 27 were impaired, 3 were in wheelchairs, 117 had pushchairs or prams, 2 persons rode mobility scooters with the remainder being unimpaired adults. In addition, 39 bicycles were recorded as being ridden over the crossing while 62 bicycles were walked over the crossing. The busiest single day recorded 329 pedestrians and 15 cyclists.

### **Description of the Proposal**

- 5.36.6 It is proposed to close E49 and extinguish the PROW on foot over it. Existing users approaching E49 from the west would be diverted south along the existing footway of Albert Street to Alexandra Road, crossing the railway at Alexandra Road CCTV crossing to Fernlea Road and then travel north along the existing footway of Fernlea Road to Ferndale Road.
- 5.36.7 The infrastructure at E49 would be removed and a 2m high steel palisade fence would be installed to prevent trespass onto the railway. Vehicular gates for the use of Network would be provided on the west side of the railway.

### **The Case for Network Rail**

- 5.36.8 Accessibility of this crossing is very good as it is fully paved with gates wide enough to accommodate wheelchairs and mobility scooters; the crossing also has handrails to assist those who may have limited mobility. Access to the crossing on either side is via flat, paved roads that lead to a ramped and fully accessible crossing.
- 5.36.9 The proposed alternative route retains the connectivity to both sides of the railway via Alexandra Road and would require pedestrians to travel an additional 450m if they were to undertake a journey between Maria Street and Ferndale Road. However additional journey times and distances would be dependent upon the ultimate destination of individual users.
- 5.36.10 The DIA<sup>248</sup> concluded that the proposed alternative route via Alexandra Road CCTV crossing was appropriate as the footways of Albert, Alexandra and Fernlea Roads presented a flat sealed surface which would accommodate all those currently using E49. The camera survey had revealed that use of E49 was spread throughout the day; although 329 pedestrians had used the crossing on the busiest survey day, the footways of the streets adjacent to E49 were of a standard footway width which is sufficient to accommodate use by large numbers of pedestrians.
- 5.36.11 At the Alexandra Road crossing an area for the use of pedestrians is marked by a solid white line which meets the footways on either side of the crossing. The purpose of these lines is to segregate pedestrians from vehicular traffic which also uses the crossing; no issues had been raised by the RSA that was carried out and the crossing currently operates for both pedestrians and vehicles in its current layout. There is no evidence of accidents occurring between pedestrians and vehicles at Alexandra Road despite the crossing being used by approximately 400 pedestrians each day.
- 5.36.12 The proposed closure of E49 would stop up public rights over the crossing; the powers sought under the order would provide for the use of plots 01 and 03<sup>249</sup> on a temporary basis to execute the necessary works to secure the railway and to construct the new vehicular access that NR requires. It was considered unlikely that the temporary use of these parts of Maria Street and Ferndale Road would have any impact upon Royal Mail's ability to undertake its deliveries.

### **The Case for the Objector who did not appear at the inquiry**

#### **BNP Paribas on behalf of Royal Mail Group Limited (RMG) (OBJ156)**

- 5.36.13 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act

---

<sup>248</sup> NR 120

<sup>249</sup> Sheet 41 of the Order Limit Plans

2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.

- 5.36.14 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.
- 5.36.15 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Maria Street and Ferndale Road.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.36.16 The proposal is unlikely to have any detrimental impact upon adjacent landowners, local businesses or utility providers as the proposed alternative utilises the footways of the existing highway infrastructure.
- 5.36.17 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However, there are no private or public vehicular rights over E49 and the closure of the crossing to pedestrian traffic would not have any impact upon RMG's existing vehicular use of adjacent streets. It is possible that the postman may utilise E49 to pass between Maria Street and Ferndale Road as part of the postal delivery round, although no evidence was submitted to suggest that the closure of E49 would adversely impact upon RMG's ability to deliver to streets either side of the railway.
- 5.36.18 Although Network Rail seeks powers to temporarily occupy parts of Maria Street and Ferndale Road for the purposes of removing the crossing infrastructure, securing the railway boundary fence and the provision of its own vehicular access gates, the extent of that occupation, both temporally and spatially will be a matter for determination at the final design stage. Even if RMG had used those parts of Maria Street and Ferndale Road over which Network Rail sought temporary occupation to park a vehicle as part of its delivery service, it would remain possible for RMG to park elsewhere on those roads in the period during which Network Rail were in temporary occupation.
- 5.36.19 Members of the public who wish to cross the railway at E49 would be directed to the Alexandra Road CCTV level crossing which is approximately 100m to the south. At the most this would involve a diversion of approximately 450m, although the precise increase any individual user would be required to undertake would be dependent upon the users' destination.



#### **SOM4(b) Impacts on other users**

- 5.36.20 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.36.21 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.36.22 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.36.23 E49 is in the built-up area of Harwich; the proposal would have no impact upon agricultural land or forestry. The type of boundary fence proposed by NR would not be out of place in this urban setting; consequently, there would be little impact upon landscape.


#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.36.24 No representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.36.25 There were no submissions made about the suitability of the proposed alternative regarding the safety, design, maintenance or accessibility of the proposed alternative. The footways of Albert Street and Alexandra and Fernlea Roads are lit and are of a standard design and construction. There is no evidence before me of incidents or accidents befalling pedestrians when using these footways. Dropped kerbs are present at road junctions which would accommodate all users of the current crossing.
- 5.36.26 Current users of the crossing would be required to undertake an additional journey of approximately 450m if the sole purpose of the journey was to travel from one side of E49 to the other; this seems highly unlikely given the urban setting of the crossing and the number of residential streets adjacent to it. The additional distance that any individual user will be required to travel will be dependent upon their point of origin and ultimate destination.
- 5.36.27 The Equality and Diversity Overview report rating for E49 was red as due to the location of the crossing, it was likely that the crossing was frequently

used by people with a protected characteristic; this is borne out by the results of the camera census. A full DIA was carried out.

5.36.28 The proposed alternative means of crossing the railway via the Alexandra Road crossing makes use of the sealed footways adjacent to public roads. Although the impact of the increased distance may be an issue for some,  the proposed alternative route is fully accessible. I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.36.29 Taking all these matters into account, I consider that the proposed alternative routes would be suitable and convenient as far as existing users of the crossing are concerned.

### **Conclusions**

5.36.30 Considering all the above, and all other matters raised in relation to E49, I conclude that the Secretary of State should include E49 within the Order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.37 **E51 Thornfield Wood & E52 Golden Square**

### **Description of the crossings**

- 5.37.1 E51 and E52 are located on the Marks Tey to Sudbury branch line to the north of the village of Wakes Colne. The village of White Colne lies to the west, Fordham to the east and Bures to the north. The area surrounding the railway and the crossings is predominantly farmed agricultural land with scattered dwellinghouses and farms. Chapel & Wakes Colne railway station is approximately 730m to the south of E51.
- 5.37.2 **E51** carries FP EX/152/11 over the railway where the path makes a junction with FPs EX/152/12 and EX/152/13 immediately to the east of the railway. Footpath EX/152/11 is an unsurfaced cross-field path which commences on Bures Road and runs in a generally easterly direction to the railway. On the eastern side of the railway, FP EX/152/12 continues eastwards to meet FP EX/146/24 at the parish boundary; this footpath then continues to Fordham Road. Footpath EX/152/13 runs south parallel to the railway to its junction with Spring Gardens Road.
- 5.37.3 E51 has wicket gates in the railway boundary fences with the wicket gate on the western side of the railway being reached by crossing a small footbridge which carries the path over a drain. E51 is a passive level crossing where the user is required to stop, look and listen for approaching trains. The railway at this location comprises one set of rails with passenger trains running at speeds of up to 50mph. A nine-day camera survey conducted in July 2016 recorded 19 adult users of the crossing. The ALCRM score for this crossing is D11; there have been no recorded incidents or misuse of the crossing.
- 5.37.4 **E52** carries FP EX/146/21 over the railway where it makes a junction with FPs EX/152/7 and EX/152/8 on the west of the railway. Footpath EX/146/21 is an unsurfaced cross-field path that commences on Fordham Road and runs in a westerly direction to the railway. On the western side of the railway, FP EX/152/7 runs west to Bures Road whereas FP EX/152/8 runs south west to Bures Road.
- 5.37.5 The approach to E52 is along a steep path within woodland which leads to stiles in the railway boundary fence with steps on either side of the railway to enable access into the railway cutting. There is decking between the rails, but this does not extend to the decision points. E52 is a passive level crossing where the user is required to stop, look and listen for approaching trains. The railway at this location comprises one set of rails with passenger trains running at speeds of up to 50mph. A nine-day camera survey conducted in July 2016 recorded 3 adult users of the crossing. The ALCRM score for this crossing is D10; there have been no recorded incidents or misuse of the crossing.

### **Description of the proposals**

- 5.37.6 It is proposed to close the crossings to all users and to extinguish the public rights of way over them.

- 5.37.7 With regard to E51, it is proposed to extinguish approximately 30m of FP EX/152/11 west of the railway and to create a new 2m wide unsurfaced field edge path footpath running parallel to the railway to the overbridge on Jankes Green Road. Having crossed the railway via the overbridge, users would continue east along Jankes Green Road for approximately 130m before turning west back towards the railway along a new 2m wide unsurfaced footpath parallel to a parcel of woodland before turning south parallel to the railway for approximately 320m to a junction with FP EX/152/12 east of the railway.
- 5.37.8 The proposed diversion would add approximately 950m to a journey crossing the railway.
- 5.37.9 Level crossing infrastructure would be removed from E51 along with the small footbridge west of the railway. The railway boundary fence would be secured to prevent trespass.
- 5.37.10 With regard to E52 it is proposed to extinguish the whole of FPs EX/146/21 and EX/152/7. In place of these two footpaths it is proposed to create a new 2m wide field edge path running south to Jankes Green Road together with a new path running north parallel to the railway to connect with FP EX/146/12 at a point south of the Robert's Hill overbridge. For those users wishing to connect with the rights of way network to the east of Golden Square pedestrians would use the carriageway of Robert's Hill and Fordham Road. It is also proposed to create a new footpath parallel to but to the north of FP EX/152/7 to serve as an alternative to the existing cross-field footpath.
- 5.37.11 For users wishing to travel east over E52, the proposed alternative would increase journey distances by 1.8Km.
- 5.37.12 Level crossing infrastructure would be removed from E52 along with the steps and access ramps leading into the railway cutting. The railway boundary fence would be secured to prevent trespass.

### **The Case for Network Rail**

- 5.37.13 It is acknowledged that E51 and E52 are two of the lowest risk crossings in the Order. There are no committed enhancements schemes in immediate prospect - although in cross-examination Mr Fisk stated that as part of the new Greater Anglia franchise, there is a plan to run trains from Sudbury to Colchester Town, such that there would be an interface with the main line.
- 5.37.14 That these are lower risk crossings, on a branch line, with no immediate improvement scheme in prospect does not mean that there is no 'case' for their closure under this Order; the strategic objectives sought to be achieved through this Order apply equally to the branch lines as they do to the mainlines.
- 5.37.15 Network Rail's proposals are to extinguish the east-west footpaths passing over each of the crossings and to divert users to two existing road bridges over the railway via new sections of footpath (running north-south) and

some sections of the rural road network. East-west access would be maintained via the railway overbridges. It is considered that the proposed diversion routes maintain links and connectivity within the wider network, which already includes the use of rural road walking, and thus provides a suitable and convenient replacement for existing users, given the purpose and characteristics of the existing routes, and how they sit within that wider network. It does not, contrary to the suggestion made by Chelmsford Borough Council, "result in network dislocation inhibiting the provision of continuous network".

- 5.37.16 Neither the eastern nor western ends of the footpaths passing over E51 or E52 connect directly to other public rights of way; the new footpaths would provide a new north – south connection where there is currently a 'gap'.
- 5.37.17 Concerns had been expressed by various objectors about the road-walking proposed as part of the diversion routes: specifically, the use of the two road bridges, and Fordham Road. The RSA commissioned by NR did not identify any issues with the proposed routes<sup>250</sup>. The Road Safety Assessment commissioned by ECC, similarly, did not raise any concerns about use of the road bridges.
- 5.37.18 Ms Tilbrook's evidence was that there was sufficient forward visibility over the bridge on Jankes Green Road and drew attention to the proposals<sup>251</sup> to clear vegetation over the two bridges and on their approaches to ensure a safe standing area for pedestrians.
- 5.37.19 As regards the proposed road walking generally, a number of objectors suggested that it was unsafe; Mr Lee of ECC considered it "dangerous", and that there was insufficient provision for walkers to step off Jankes Green Road if a vehicle approached.
- 5.37.20 Ms Tilbrook's evidence, in contrast, was that she had walked the proposed diversion routes for both E51 and E52 and had done so perfectly safely. In respect of E51, she confirmed that she had walked the route, not wearing personal protective equipment and felt "very safe in that environment". She accepted that there were some steep banks alongside the road but identified that there was opportunity for vegetation cut-back and re-profiling on the other side of the bend. She acknowledged that the availability of step off points would vary from side to side and might not be available for the whole of the route, but she did not consider that to be an issue, given the ATC data for Jankes Green Road showed that vehicles travelled at around half the posted speed limit<sup>252</sup>. In respect of E52, Ms Tilbrook's evidence was that there were sections of verge that walkers could step on to, and that sufficient areas could be achieved along that route for users to step off the carriageway and drew attention to the level of traffic volumes (and speed) of vehicles using Fordham Road<sup>253</sup>.

---

<sup>250</sup> NR16 354763/RPT219 page 12; NR/16 376516/RPT016 page 15

<sup>251</sup> NR12 pages 42 and 43

<sup>252</sup> NR32/2 tab 1 page 42 - 44

<sup>253</sup> NR32/2 tab 1 page 84 - 86

- 5.37.21 It is to be noted that Fordham Road is currently used by pedestrians, as part of the wider network, and, as pointed out by Ms Hobby, forms part of the National Cycle Network. Network Rail maintains, therefore, that its proposed diversion routes are safe, and suitable.
- 5.37.22 Objections were also raised to the proposed realignment of existing FP EX/152/7 from its definitive line to the field edge to the north regarding visibility for pedestrians emerging onto Chappel Road. Mr Kenning's evidence was that this proposal had been made in response to consultation feedback which indicated the proposed line was that which was currently in use. However, there was no requirement for FP EX/152/7 to be moved to facilitate the closure of E52; deleting this proposal from the Order (if the Secretary of State was so minded) would not impact on the closure of the level crossing.
- 5.37.23 CBC objected to the removal of two sections of hedgerow to accommodate the proposed new footpath. CBC has assessed these as 'important hedgerows' under the Hedgerows Regulations 1997 and has provided survey data which concluded that the hedgerows were 'important'. However, the survey notes do not indicate which of the paragraphs in Schedule 1 apply. There appears to be a professional disagreement as to whether there were sufficient woody species in the hedgerow to satisfy paragraph 7 of the Schedule. In respect of E51 it is not clear which 'road' the hedgerow is identified as being adjacent to as Janke Green Lane does not appear to be a qualifying 'road' within the meaning of paragraph 8 of Schedule 1 to the Regulations.
- 5.37.24 The surveys carried out on behalf of Network Rail did not consider that the hedgerows qualified as "important hedgerows". That was the conclusion reached in the EIA Screening Request Report<sup>254</sup>, and in the further surveys carried out during 2017<sup>255</sup>. Although there is a difference of opinion between Mott MacDonald's ecologists and the CBC's landscape officer, it is submitted that the conclusions reached by Mott MacDonald can be confidently accepted as they reflect the conclusions found in the Screening Request Report.
- 5.37.25 The hedgerow issue is not, in any event, determinative of the key matters in respect of E51 and E52; the status of the hedgerow is a matter to which regard can be had but regulation 6 permits the removal of a hedgerow if that removal is required to enable development to be carried out for which planning permission has been granted or deemed to have been granted. It is Network Rail's case that the exemption in regulation 6 would be engaged if the deemed planning consent applied for were to be granted. It is also submitted that the loss of the two short sections of hedgerow at issue would not provide the basis for concluding that the crossings should be removed from the Order if the Secretary of State was satisfied that the strategic case for the Order was established, and that the proposed diversion routes would provide a suitable and convenient replacement for existing users.

---

<sup>254</sup> NR 155

<sup>255</sup> NR 161

- 5.37.26 For the reason summarised above, and set out more particularly in its evidence, Network Rail maintains that the Order may properly be confirmed in respect of these two crossings.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Ian Andrewartha (OBJ 012)**

- 5.37.27 Closure of E52 would involve walkers having to use an unacceptably long and dangerous diversion, by using a long stretch of minor roads with no footpath. This would expose walkers to a higher degree of danger from motor vehicles than the miniscule degree of danger encountered by crossing the railway on the existing level crossing. Closing the level crossing would be a retrograde step in terms of safety.

#### **G J McCoyd (OBJ 010)**

- 5.37.28 Mr McCoyd is disappointed that Network Rail is proposing to close E52 to all users despite 94% of those who responded to the consultation disagreeing with the proposals and despite there not being an incident of any type between 2011 and 2015. Many walkers use the railway line and walk from Chappel to Bures or vice versa; the proposed changes would make the walk considerably less enjoyable.

#### **Wakes Colne Parish Council (OBJ 065)**

- 5.37.29 Authority for the closure of E51 should not be granted as connectivity with the countryside for local residents and walkers would be greatly reduced. The proposed diversion alongside a belt of woodland to cross the road bridge and travel down the opposite side of the wood is a pointless diversion which is inconvenient for those walkers wanting to travel east to west.
- 5.37.30 The branch line is a single-track line with two trains per hour. Visibility is very good on this straight section of track. Although trains can run at 50mph many run at slower speeds as they are approaching or leaving Chappel and Wakes Colne station. It is doubtful whether Network Rail would reduce the operating costs of the railway by closing E51; maintenance appears to be minimal at this crossing.
- 5.37.31 The parish council supports other parish councils in objecting to the closure of E52 and E54<sup>256</sup>.

#### **Bruce Emerson (OBJ 178)**

- 5.37.32 The Marks Tey to Sudbury line is a low risk single track line with infrequent trains running at low speeds. E51 links the public footpaths on either side of the railway. The proposed diversion is unnecessary, and the proposed

---

<sup>256</sup> No grounds for objecting to the closure of E52 or E54 were specified in the letter of objection.

alternative route is long, visually unattractive and exposes pedestrians to new hazards on narrow roads and overbridges.

- 5.37.33 E51 forms part of two locally promoted walks: the Margery Allingham Walk and the Fair Maid Walk. The risks walkers would be introduced to on the alternative route along the road should be assessed and balanced against the risk of using the existing crossing point.

### **The Case for the Objectors who did appear at the inquiry**

#### **Dr Stephen Thompson (OBJ 086)**

- 5.37.34 Closure of E51 and E52 would result in a loss of amenity with the proposed alternative routes being unsafe. The proposed closures affect crossings with very low collective and individual risk ratings; closure of the crossings without adequate provision being made for securing the railway boundary by replacing the minimal amount of fencing present will not reduce the risk of misuse of the railway or trespass, as a controlled and regulated crossing could easily become an uncontrolled crossing.

- 5.37.35 Diverting pedestrians to the overbridges as proposed will expose users to a greater level of risk than that present at E51 and E52. There is limited forward visibility at the humped bridges with nowhere for pedestrians to retreat should a vehicle arrive at the bridge at the same time as a pedestrian. No comparative risk assessment has been undertaken between crossing the railway at E51 or E52 with crossing the railway at the road bridges. The proposed alternatives are unacceptably long, circuitous and unsuitable as replacements for the existing crossings.

- 5.37.36 The reliance placed by Network Rail's witnesses on the good behaviour of other road users for the safety of pedestrians was a cause for concern. Department for Transport statistics for 2017 showed 23,805 pedestrian casualties and 470 pedestrian deaths on Britain's roads; the suggestion that pedestrians should listen for approaching traffic and 'step off' the carriageway into adjacent bushy verges is not an acceptable approach to pedestrian safety.

- 5.37.37 The proposal appears to be at odds with the Department for Transport's stated aims of making walking and active travel easier.

#### **Colchester Borough Council (OBJ 141)**

- 5.37.38 There is no safety-based case for closing E51 and E52. Both collective and individual risk at these crossings is very low with the FWI suggesting that there would be a fatality at these crossings once every million years at E51 or once every 250,000 years at E52. In contrast, the proposed alternative routes introduce a greater risk to pedestrians by interacting with the local road network. CBC submits that the case for not increasing safety risk elsewhere within the transport network is stronger absent a material gain to the transport network generally.



- 5.37.39 Closing E51 and E52 will lead to a loss of amenity which will not be offset by any improvements to the rail network now or imminently. Local residents, but also recreational walkers have identified the role that these crossings play not only in their community but as part of a wider transport network. The proposed alternatives are lengthy and will not materially improve the footpath network. The proposed alternatives also introduce more pedestrians onto the road network (i.e. those that would otherwise be walking "cross country" being required to road walk in parts) – clearly such an outcome does not benefit the road network or pedestrians either.
- 5.37.40 The proposed alternative routes require diversions of between 950 and 1,900m to arrive at the original destination catered for by the current crossings. E51 and E52 are part of long-established pedestrian links providing east - west access to the local countryside. The closures would result in network dislocation and compromises the effectiveness of the rights of way networks role in increasing public use and providing economic benefits within the rural area.
- 5.37.41 The proposed closures do not appear to accord with Network Rail's published strategy as closures should be targeted where there is higher risk; passive crossings should be made active; the crossings are not on a high-speed line nor near a station; and the strategy suggests improvements to crossings could be made. No infrastructure investment has been identified within NR 24 for this line to increase capacity or line speeds.
- 5.37.42 It is contended that the hedgerows to be breached by the diversions are "important" as defined by the Hedgerows Regulations 1997. There is a dispute between CBC and Network Rail on this matter. The assessment undertaken by CBC demonstrates that the hedgerows at E51 and E52 are 'important' in accordance with paragraphs 8 and 7 of Part II to Schedule 1 of the Regulations respectively. Those features which identify that the statutory criteria are met are marked with an asterisk [\*] on the assessments undertaken by CBC<sup>257</sup>.
- 5.37.43 The harm that would arise to these important hedgerows from the proposals with limited (if any) benefits arising from the closure is another reason to oppose the proposed closure of E51 and E52.

#### **The Ramblers (OBJ 148)<sup>258</sup>**

- 5.37.44 The Ramblers object to the proposals for E51 and E52 because the alternative routes will not maintain the east-west connectivity provided by these crossings, nor are they sufficiently safe for walkers. The Ramblers have also noted that it is unclear how exactly the boggy conditions, including a drainage ditch, to the north of existing FP EX/152/13 (on the east of the railway) will be addressed.

---

<sup>257</sup> OBJ 141 Proof E51 – E52 – Appendix B

<sup>258</sup> OBJ 148 W-029 7 W-033 Ms Hobby

- 5.37.45 Both of these crossings are on the single-track Marks Tey to Sudbury Branch line. It has a line speed of 50mph, and Mr Kenning acknowledged in cross-examination that there were no plans to increase line speeds, nor to implement any enhancement schemes.
- 5.37.46 The ALCRM scores are some of the lowest in this Order. There is simply no compelling case for why these crossings should be closed, and why they should be closed now. What is more, the Ramblers evidence, in addition to that of a number of other objectors demonstrates that user safety will, in fact, be worsened through Network Rail's proposals. Ms Hobby stated that she "*wouldn't dream of leading a group*" across the road bridge on Jankes Green Road because it simply was not safe enough. There are limited opportunities to step-off the carriageway to avoid oncoming traffic and visibility is compromised.
- 5.37.47 It was Ms Hobby's evidence that users approaching from the south would, in reality, take a short-cut route along Bures Road to the south-west of the crossing, to avoid the lengthy and convoluted nature of the proposed diversion. Bures Road is clearly unsafe for walkers. Whilst Network Rail is not proposing use of Bures Road as part of its alternative route, if the common-sense reality is that users will use it, then the lack of safety here is a relevant issue.
- 5.37.48 Concerns were also raised over the use of Dowling Road and Fordham Road as alternatives to E52 as there is limited passing room for walkers and other road users along these roads. For both of these proposals, which rely on stretches of roadside walking, Ms Hobby highlighted the danger in relying on walkers to hear oncoming vehicles, particularly for those users who have hearing loss.
- 5.37.49 It was also queried why the proposed diversion of FP EX/152/7, on the western side of the railway, was necessary for Network Rail's proposals. Ms Hobby's evidence was that the present alignment of FP EX/152/7 provided for a reasonably close connection, across Bures Road, from the side road approaching Bures Road from the west. By moving the footpath further north, the proposals would require users approaching eastwards from this side road to walk further along the busy, and unsafe, Bures Road. Movement of this section of footpath is entirely unnecessary for Network Rail's case to close the crossing.
- 5.37.50 In terms of the ROW network, all parties accept that these crossings provide east-west connectivity. It was Ms Hobby's evidence that E52 provided a reasonably direct link to the Sergeant's Orchard nature reserve and to the network of public rights of way surrounding the former RAF Wormingford airfield. Unfortunately, the proposals do not provide a replacement east-west link. Instead, they propose new north-south connections alongside the railway. Mr Kenning argued that when viewed from the wider OS mapping, the proposal does provide an east-west route, albeit that this utilises different parts of the network. However, any such east-west route is far too long and convoluted to act as an appropriate replacement for existing users.

5.37.51 It is clear from the objectors' evidence that these are well-used and highly valued connection points. Ms Hobby gave illustrations of how they can fit into longer walks, pointing out some of the local areas of interest and natural beauty. As she explained, the possibilities for how users may walk in the area are endless. Ms Hobby was highly familiar with the crossings and local surroundings, having herself used both crossings as part of group walks on at least half a dozen occasions.

5.37.52 The loss of such valued public rights of way for little, if any, tangible gain cannot be justified.

**Essex County Council (OBJ 195)<sup>259</sup>**

5.37.53 There are some issues which are common to both E51 and E52 in addition to some issues being crossing specific. One common feature is that the east – west direction of the current crossings is not maintained by the proposed diversions. Although it was acknowledged that the alternative provided a link between the proposed diversions, such connectivity is at the expense of the links in the network provided by the current crossings.

5.37.54 It was Mr Lee's evidence that a connection between E51 and E52 was not needed as the existing crossings provide the key east west links; the proposed alternative loses such a link and instead provides a north – south link in the network. Mr Lee accepted that access into the Dedham Vale AONB could not be reached by solely using the public rights of way network and accepted that some road walking was used. However, his assessment was that the proposals would render access to Thornfield Wood unviable, and that the public's desire for a direct means of access to the AONB would be frustrated.

5.37.55 Network Rail's position was that the network would be maintained by linking footpaths via some road walking. Whilst ECC does not object to the principle of road walking, the character of the roads associated with these diversions was of concern. There are issues at four sites in particular. Firstly, in relation to E51, the diversion takes users along a road flanked by high sided banked verges approximately 4 feet in height<sup>260</sup> and overgrown vegetation which limited forward visibility<sup>261</sup>. The road is narrow and single track and provides little or no opportunity for users to step off the carriageway. In cross examination Ms Tilbrook accepted that cutting back vegetation would not resolve the issue at this location.

5.37.56 The second safety concern related to the utilisation of the road bridges for both E51 and E52 diversions. Both bridges are narrow, single track and provide no point of step off for pedestrians. Mr Lee's evidence was that he didn't feel safe walking across either bridge, and he was concerned that vehicles would not be able to see pedestrians. Photographs taken of the E52 diversion bridge show the vehicles tyre tracks tightly hugging the wall of the

---

<sup>259</sup> OBJ 195 W3/1 Mr Lee; W5/1 Mr Seager

<sup>260</sup> OBJ 195 inquiry document 7 photograph C

<sup>261</sup> OBJ 195 inquiry document 7 – photographs A - D

bridge demonstrating the little space available and the risk of conflict between vehicles and users.

- 5.37.57 Thirdly, with regard to Fordham Road, during their Road Safety Assessment Mr Seager and Mr Corbyn refused to walk this stretch of road but conceded that with sufficient vegetation clearance suitable step off points could be created.
- 5.37.58 Finally, as part of the proposals, NR have proposed to divert FP EX/152/7 northwards to run at the field edge. The proposed junction with Jupe's Hill would be by the corner of a residential property with high boundary vegetation. The key concern here is that pedestrians would not have a proper sightline of oncoming traffic, and traffic is not able to see pedestrians. Network Rail have submitted that if the Inspector were to consider retention of the existing route of this path it would not hold an objection.
- 5.37.59 ECC object to the closure of both E51 and E52 and maintain that the alternative routes are not suitable and convenient, in relation to paragraph 4 of NR 135, the proposals are not appropriate for a particular purpose as the alternatives create paths which provide north-south connectivity in replacement for paths which provide east-west connectivity. Furthermore, desire lines are not maintained; the length of the diversion is significant, and the routes proposed are not safe for the reasons explained above.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.37.60 No objections were received from, or submissions made by, landowners whose land would be affected by the proposals. It is unlikely that any party would be unable to carry on their undertakings or access their properties as a result of the proposals. There would be an adverse impact upon the land either side of the railway to the south of Jankes Green Road arising from the creation of the proposed rights of way which would only be partially mitigated by the extinguishment of that part of FP EX/152/11 to the west of the railway.
- 5.37.61 The impact of the proposed footpaths would be mitigated by the proposed paths running as field edge and not cross-field. Although the proposed re-alignment of FP EX/152/7 to the north of its current position would not remove the burden of the PROW from the land, the replacement of a cross-field path with one which runs at the field edge is likely to benefit the management of the land. This proposal has been put forward in response to consultation with the owner of the land who considers that the proposed route is one the public currently use.

5.37.62 Concerns were raised regarding the suitability of road verges to provide links between the proposed footpaths and the proposed outlet for footpath EX/152/7 on Jupe's Hill. The evidence regarding the physical characteristics of the verges on Jankes Green Road for those pedestrians walking east demonstrated the difficulties that pedestrians would be likely to encounter when walking along the road when facing oncoming traffic. Detailed design of appropriate mitigation, such as vegetation removal and the creation of step off points may address some of the issues raised in relation to use of road verges as part of these proposals.

5.37.63 There does not appear to be any adverse impact that could not be addressed through detailed design and the provisions for compensation.

#### **SOM4(b) Impacts on other users**

5.37.64 The crossings are located on a branch line railway which runs between Marks Tey and Sudbury. Although there are no current plans to upgrade the line to enable faster or more frequent trains to run along it, Network Rail submits that branch line crossings are included within the Order as they are encompassed by the strategic objectives being pursued. The strategic case sets out the way in which Network Rail and rail users would benefit from the proposed alterations to the level crossing estate.

#### **SOM4(c) Impact on flood risk**

5.37.65 There is no indication that the proposal would have any impact on flood risk. A narrow drainage ditch to the north of FP EX/152/13 would require bridging or culverting to provide a link between the existing footpath on the east side of the railway and the proposed new footpath; it is unlikely that such works would have any impact upon flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.37.66 Chalkney Wood SSSI lies approximately 2.5Km to the south-west of E51 and Arger Fen SSSI lies approximately 5.5Km to the north-east of E52. The proposed diversions are unlikely to have any adverse impact upon these sites or the features for which they are so designated.

5.37.67 The Essex Wildlife Trust's Sergeants Orchard nature reserve is located approximately 350m to the north-east of E52 with access to the reserve from Fordham Road being available via BR EX/146/35. Although the proposed diversions would not directly impact upon access to the reserve, The Ramblers submit that E52 provides a reasonably direct link to it; visitors to the reserve approaching from the west of the railway would be required to undertake a longer journey before arriving at their destination.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.37.68 E51 and E52 lie to the north-west of the village of Chappel and Wakes Colne and are set within what is predominantly arable farmland. The proposed diversions would run as field-edge paths; the impact upon

productive arable land would be minimised. The proposed diversion of FP EX/152/7 would require some management of the vegetation at the junction with Jupe's Hill to improve visibility at the junction, however such works as may be necessary are unlikely to have a significant impact upon the landscape.

- 5.37.69 The proposed diversion of E51 to Jankes Green Road would require a breach to be made in the hedge on the roadside to permit access around the eastern end of the tongue of woodland to the south of the lane. There is a dispute between Network Rail and CBC as to whether this hedgerow is an 'important' hedgerow under the Hedgerows Regulations 1997. Colchester's landscape officer considers the hedgerow to be important because of its species composition and associated number of trees within the hedge, its elevated feature as part of a bank or wall and the lack of gaps within its length. Although the hedge is adjacent to Jankes Green Road it is not adjacent to a public footpath or bridleway. Network Rail dispute that the hedgerow at issue satisfies the necessary criteria<sup>262</sup>.
- 5.37.70 Irrespective of whether or not the hedgerow is important, regulation 6 (1) (e) provides that a hedgerow to which the regulations apply can be removed to permit development for which planning permission has been granted or deemed to have been granted. The creation of a gap in the hedge at this location will have an adverse impact upon the landscape, but the impact will be highly localised and is unlikely to be of significance in the wider landscape.
- 5.37.71 New fencing will be installed along the sides of the railway at the crossing points if the proposal is approved. This would be a renewal of the existing boundary fence and will be required to prevent future trespass upon the railway.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.37.72 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.37.73 The main issues regarding the two crossings related to the length of the proposed diversions; the substitution of east – west routes for ones which run north-south; the safety of the sections of the alternatives using local roads; and the proposed diversion of FP EX/152/7 as part of the overall package.
- 5.37.74 For those pedestrians wishing to travel east along FP EX/152/11 to Fordham Road via E51 the proposed diversion would take a user north for approximately 451m, then east to the overbridge for 220m and then south

---

<sup>262</sup> NR 161

again for approximately 440m to arrive at the eastern side of the railway on FP EX/152/12. The proposal would require users to undertake a 1.1 Km diversion to arrive at their intended destination of the opposite side of a railway which is approximately 15m in width.

- 5.37.75 Similarly, for those travelling east along EX/152/7 and wishing to travel to Golden Square the proposal would require the user to either travel north then south crossing the railway via Roberts Hill and Fordham Lane or travel south to the Jankes Green Road overbridge and then walk along Jankes Green Road and Fordham Road. Either of these routes would require the user to travel an additional 1.8Km to arrive at Golden Square.
- 5.37.76 Whilst the principal use of the crossings appears to be for recreational purposes, a requirement to undertake an additional kilometre of walking to avoid E51 and almost two kilometres to avoid E52 on circuitous routes running in the opposite direction to the intended direction of travel is overly long and cannot be considered to be convenient for users of the current crossings.
- 5.37.77 The proposed routes would provide a means of crossing the railway east – west via the overbridges; as such, connectivity within the network would not be lost. Whilst the provision of north-south routes in an area where the network is predominantly east - west may be welcomed, those additional opportunities have to be balanced against the needs of current users of the crossings who would be inconvenienced in having to make circuitous diversions to reach their intended destinations. The advantages of a new north-south route do not however, outweigh the disadvantages of the loss of the current, direct east-west routes.
- 5.37.78 The use of Jankes Green Road is a feature common to the proposed alternatives to E51 and E52. Where the proposed path running south from E52 joins Jankes Green Road there is limited visibility towards to the overbridge because of the curvature of the road and the embankment which raises the road over the railway. Pedestrians standing at this point will not know whether a vehicle is on or approaching the bridge from the east.
- 5.37.79 On the south side of Jankes Green Road to the east of the bridge, the verge takes the form of a raised embankment there is no opportunity for a pedestrian to 'step off' the carriageway on this section to avoid an oncoming vehicle. Whereas NR submit that there are places on the opposite side of the road where pedestrians could step off into a verge, or places where such refuges could be made, for a pedestrian travelling east and facing oncoming traffic, a refuge or step off on the northern side of the road would be of limited assistance.
- 5.37.80 Whilst vegetation at the road bridges could be managed to improve visibility and whilst vehicles may be travelling below the speed limit, pedestrians diverted onto Jankes Green Road to travel east would be exposed to additional risk on that section of the road where there was no opportunity to step off the carriageway.

- 5.37.81 No comparison has been made between the degree of risk faced by pedestrians when crossing the railway and when walking along the roads at issue. There is no known methodology where such comparisons can be made. It is acknowledged that E51 and E52 are low risk crossings. The branch line provides a shuttle service along its single track with two trains per hour passing over the crossings. Traffic flows along Janke Green Road are comparable with an average of 25 vehicles per day. Whereas pedestrians at E51 and E52 have sufficient forward visibility of approaching trains, forward visibility on parts of the local road network is limited and there are parts of the route where pedestrian safety would be compromised by the absence of verges onto which the user could 'step off' the carriageway. The proposed alternative routes are unsuitable for current users of the crossings.
- 5.37.82 The Equality and Diversity Overview report rating for E51 and E52 was green and noted that the approach paths, steps and stiles on the current routes meant that closure of the crossing and redirection of the footpaths would not reduce accessibility. No DIA was carried out. The proposed alternative routes may be considered to be more accessible than the current routes as they would avoid the stiles, steps and slopes found at the existing crossing points. However, those who may have found difficulty in negotiating the physical features of the current routes would have to contend with the limitations of the proposed alternatives in terms of length, circuitousness and safety, together with any path furniture required to cross the field boundaries through which the new paths would pass. In this respect, those with protected characteristics would be affected to the same extent as the rest of the population.
- 5.37.83 The proposed diversion of FP EX/152/7 to a location said to be the one currently in use would be of benefit to the owner of the land as a cross-field path would be replaced with a field-edge path. The proposal does not however provide an alternative to E52 and should not form part of the Order if E51 and E52 are removed from it.

### **Overall conclusion**

- 5.37.84 Considering all the above, and all other matters raised in relation to E51 and E52, I conclude that the Secretary of State should not include E51 or E52 within the Order as the proposed alternatives would not provide existing users of the crossings with suitable and convenient alternative means of crossing the railway.



## 5.38 **E54 Bures**

### **Description of the crossing**

- 5.38.1 Footpath EX/70/30 crosses the Marks Tey to Sudbury branch railway line approximately 170m south of Bures railway station. The footpath and E54 provides a link between Colne Road and Colchester Road via The Paddocks. Residential properties bound the railway to the east and west and the land to the south of the footpath on the western side of the railway is being developed for housing. Footpath EX/70/30 is in a predominantly urban setting although land to the north-west of Colne Road and to the south-east of Colchester Road appears to be farmed arable land.
- 5.38.2 E54 is approached from the west along an unsurfaced path which runs in an alleyway formed by the boundary fences and hedges of adjacent properties. There are stiles in the railway boundary fence and decking furniture at the crossing to enable pedestrians to cross safely. On the eastern side of the railway, the footpath runs over the footways of housing estate roads to Colchester Road. There is no direct link path from the eastern end of FP EX/70/30, although FP EX/70/32 commences a short way along Colchester Road, crosses the Stour and leads to Bures St Mary.
- 5.38.3 E54 is a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises a single line of rails and carries a passenger shuttle service between Sudbury and Marks Tey at line speeds of up to 50 mph. The ALCRM score for this crossing is D8. The 9-day camera census undertaken in July 2016 showed a total of 34 pedestrians using the crossing of which 8 were unaccompanied children<sup>263</sup>. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposal**

- 5.38.4 It is proposed to close E54 to all users, extinguishing the PROW over the crossing and that part of FP EX/70/30 between Parsonage Hill / Colne Road and The Paddocks.
- 5.38.5 Current users of E54 wishing to access the crossing from the west would be required to travel north along the footway on the eastern side of Parsonage Hill and cross the railway using the existing underbridge on Station Hill. A new section of footway on the northern side of the road would be provided to provide continuity of the existing footway across the verge at Water Lane. A crossing point would also be provided to enable users to return to the south side of Station Hill. Users would then travel along the footway of The Paddocks to connect to the residual part of FP EX/70/30. The diversion would add around 360m to a journey from the east side of the railway to the west side.

---

<sup>263</sup> NR25 3267-LON-E54 page 6

- 5.38.6 Level crossing infrastructure would be removed, and fencing installed at the railway boundary to prevent trespass.

### **The Case for Network Rail**

- 5.38.7 It is acknowledged that E54 is a 'low risk' crossing and that there are no immediate proposed enhancements in respect of this line. However, this does not mean that there is no 'case' for its closure under this Order. The strategic objectives sought to be achieved through this Order apply equally to the branch lines as they do to the mainline. Mr Kenning gave evidence regarding the costs likely to be incurred in making this crossing 'active' given the proximity of the station and the absence of signalling on this line.
- 5.38.8 The exact details of the works required to create the new footway and the demarcation of the appropriate crossing point, will be a matter for discussion with ECC during detailed design; the concern expressed by Mr Russell regarding deliverability is not shared. The new footway will, in any event, have to be provided to the satisfaction of the highway authority before the crossing can be closed.
- 5.38.9 The main issues raised at inquiry (save for the question of why the crossing was to be closed) centred on the loss of the link provided by FP EX/70/30 and road safety concerns around the use of the Station Hill underbridge: specifically, visibility for users to the west of the underbridge. However, the RSA carried out in respect of this proposal did not identify any road safety concerns<sup>264</sup>. Nor have highway officers from ECC raised any objections to the proposals.
- 5.38.10 Ms Tilbrook explained in her oral evidence and has set out in a technical note<sup>265</sup> the basis on which she was satisfied that there is sufficient forward visibility for drivers heading west along Station Hill to be confident that pedestrians will be able to cross the road in safety to access the footway on the western side to pass through the underbridge. The technical note also sets out the reasoning for considering that Mr Russell's evidence to the contrary proceeds on an erroneous basis. The Secretary of State is asked to prefer Ms Tilbrook's evidence in this regard.
- 5.38.11 Ms Tilbrook's evidence considered the position of FP EX/70/30 in the wider network and how the proposed diversion links back into that network to maintain access to local facilities such as the playing field and village hall across the river in Bures St Mary. The proposed diversion route undoubtedly provides the same connections as that provided for by the level crossing. The diversion would add around 4 minutes of additional time to a journey which was unlikely to deter people from using the route; others clearly disagree.
- 5.38.12 Network Rail maintains, however, that the Secretary of State may properly be satisfied that a suitable and convenient replacement route will be

---

<sup>264</sup> NR32/4/2 Appendix D

<sup>265</sup> NR 174

provided along the existing highway, with the works proposed, for existing users of the level crossing. The Order may therefore be confirmed without modification.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Ian Andrewartha (OBJ 012)**

5.38.13 The level crossing gives residents from nearby housing easy access to the surrounding countryside for walks, runs, health and enjoyment. Closure of the crossing would hinder this, making it more difficult to enjoy the countryside and make delivery of The Connection, an important local magazine, more difficult.

#### **T Luke Butcher (OBJ 055)**

5.38.14 The proposed alternative route is unfit for purpose. The railway bridge has a footpath on only one side – the side furthest from Colne Road. Pedestrians therefore have to cross the road on a blind bend against three sources of traffic to reach the bridge footpath or walk on the side of the road without a footpath around the inside of a blind bend and hope you are not hit by a vehicle.

5.38.15 The crossing is used by people who live to the west of the railway to access the village or the railway station. The crossing provides a clear view along the railway for hundreds of metres in both directions at a point where trains are travelling slowly to or from the station. Numerous people use this crossing to avoid the railway bridge; a wider view of public safety should be taken regarding this crossing. It should not be closed to improve the railway company's profitability or efficiency.

#### **BNP Paribas on behalf of Royal Mail Group (OBJ 156)**

5.38.16 RMG is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011 RMG has a statutory duty to deliver mail to every residential and business address in the country.

5.38.17 RMG's sorting and delivery operations rely heavily on road communications. RMG's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network. Disruption to the highway network can affect RMG's ability to meet its statutory obligations and can present a risk to its business.

5.38.18 RMG objects to the proposed order on the grounds that its operational and statutory duties may be adversely affected by the proposal regarding Water Lane and The Paddocks.

## **The Case for the Objectors who did appear at the inquiry**

### **Bures Hamlet Parish Council (OBJ 132)<sup>266</sup>**

- 5.38.19 There is no suitable alternative route proposed in place of crossing E54. Sighting distances for pedestrians, motor vehicles (which include large tipper lorries and farm vehicles) and trains are major considerations to be taken into account. Network Rail's own evidence clearly states that sighting distances for pedestrians in both directions at the crossing is more than adequate. All trains on the branch line stop at Bures station, therefore the majority of trains pass over the crossing at less than line speed.
- 5.38.20 In contrast, the available sighting through the underbridge on Station Hill is minimal in both directions and highly unpredictable. If the crossing is closed and walkers, possibly in groups, are forced to pass beneath the bridge on Station Hill, then it may not be too long before a serious incident occurs at the bridge site.
- 5.38.21 The footway on Station Hill near the overbridge ends with a dropped kerb. Due to the rail bridge and the end of the pavement, there is no realistic alternative but to cross Station Hill and join the pavement on the other side. This means crossing the road blind as there is no visibility to see traffic approaching from the village. In pedestrian safety terms this is the most dangerous point of the proposed route.
- 5.38.22 It is understood that Network Rail propose to provide a new footway at the Water Lane junction and along Station Hill and that a crossing point is to be provided to enable pedestrians to cross Station Hill a second time to reach the footway at The Paddocks. There appears to be minimal space available for such works on the northern side of Station Hill to the east of Water Lane.
- 5.38.23 E54 is used by families living on Colne Road and in Parsonage Grove as part of a virtually traffic-free route to the primary school in Bures St Mary via the millennium bridge over the Stour. Closure of the crossing would lead to these families taking the more hazardous route under the railway bridge or revert to using their car.
- 5.38.24 Mrs Aries' evidence was that the Bures Community SpeedWatch (CSW) team regularly received anecdotal reports of excessive speeding through the village, a matter reflected by the growing number of motorists recorded driving at speeds well in excess of the 30mph limit on every CSW shift which she had overseen in the previous two years.
- 5.38.25 E54 is a very low risk crossing. The proposed alternative is unsatisfactory as it is more dangerous than the current crossing and no safe alternative route is being provided.

---

<sup>266</sup> OBJ 132/1 Mr Welch; OBJ 132/2 Mrs Aries; OBJ 132/3 Mr Lee

### **The Ramblers (OBJ 148)<sup>267</sup>**

- 5.38.26 The closure of E54 does not represent a diversion as the public already have the right to follow it; closure of E54 is therefore a simple extinguishment of the rights over the crossing. The alternative route proposed is not suitable or convenient because it is unsafe.
- 5.38.27 Users are directed to cross the road under the underbridge on Station Hill where visibility for pedestrians is severely restricted. With respect, it was not apparent why Ms Tilbrook considered that visibility was sufficient. Ms Tilbrook placed reliance upon the Highway Code stopping sight distances which, for the reasons given in relation to the crossing at E29, is not acceptable.
- 5.38.28 Ms Tilbrook also emphasised that when a person has reached about halfway into the carriageway itself, they can achieve the visibility required by MfS. Of course, this is too late. It is clear that the MfS visibility standards could not be achieved at the location where a pedestrian will need to make the decision as to whether to start crossing the road. Ms Tilbrook even accepted that in some locations to the western side of the bridge (on the south side of the road) it is not possible to achieve even the Highway Code visibility.
- 5.38.29 Mr Russell's evidence for this crossing could not be clearer: it is impossible to cross this stretch of road safely. Mr Russell's evidence provided a visibility envelope showing an area with a blue line where visibility is needed<sup>268</sup>. It can be seen that this line is crossed over by dotted and solid lines representing the edge of the carriageway. As the road curves around, it is simply not possible for pedestrians to see oncoming traffic from all necessary angles.
- 5.38.30 The plan included in Network Rail's technical note shows that a car driver approaching from the east cannot see a pedestrian to the west of the bridge waiting to cross south to north until the pedestrian is standing in the carriageway. On design standards Mr Russell was adamant that "*the guidance in Manual for Streets is the industry standard for designing safe roads*". It is, itself, a relaxation of the stopping sight distances required in DMRB, which are even more onerous. The Highway Code distances relied on by Network Rail are never used in designing a highway – because they rely on a driver reacting instantaneously.
- 5.38.31 Network Rail has provided no specific detail as to where the crossing point will be located. What is more, Network Rail has not demonstrated who exactly owns the land over which it will be necessary to provide the suggested footway to the north of Station Road.
- 5.38.32 Mr Evans' evidence was that E54 served to connect path users to a number of community facilities in and around the village and that it is used by the

---

<sup>267</sup> OBJ 148 W-028 Mr Evans; W-019 Mr Russell

<sup>268</sup> OBJ 148 inquiry document 15 Visibility Technical Note

Suffolk Ramblers for a quarterly organised walk. What is more, as the village grows this point of access will become more, not less, valued.

- 5.38.33 Network Rail has simply failed to justify the need to close this crossing. The line is single-track operating a "one train working" system at a maximum line speed of 50mph (with no current plans to increase this). Sightlines are well over the minimum and the ALCRM score of D8 is low. The proposed alternative is unsafe, and it is not a suitable replacement for users of the crossing.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.38.34 The only landowners affected by this proposal appear to be Network Rail and the owners and occupiers of those properties on The Paddocks and Parsonage Close which abut FP EX/70/30. Access to property would not be diminished as a result of the proposal; it is highly likely that the adjacent property owners would experience less disturbance with the cessation of members of the public using the footpath to access the crossing.
- 5.38.35 The proposal is unlikely to have any detrimental impact upon adjacent landowners, local businesses or utility providers as the proposed alternative utilises the footways of the existing highway infrastructure. As noted by the Ramblers and not disputed by Network Rail, in utilising only the existing highway network, the proposal amounts to an extinguishment of the existing PROW and not a diversion of it. E54 is included within Part 2 of Schedule 2<sup>269</sup> of the Order as a crossing which is not subject to the opening of a new highway.
- 5.38.36 RMG raised its concerns regarding the impact alterations to the highway network may have upon its statutory obligations and business. However, there are no private or public vehicular rights over E54 and the closure of the crossing to pedestrian traffic would not have any impact upon RMG's existing vehicular use of adjacent streets. It is possible that the postman may utilise E54 to pass between Parsonage Close and The Paddocks as part of the postal delivery round, although no evidence was submitted to suggest that the closure of E54 would adversely impact upon RMG's ability to deliver to streets either side of the railway.
- 5.38.37 Network Rail seeks powers to temporarily occupy parts of Station Hill for the purposes of providing a new footway on the north side of the road and to provide a crossing point of the road. The extent of that occupation, both temporally and spatially will be a matter for determination at the final design stage. Clearly RMG would require the use of Station Hill as part of its delivery service, however the provision of a new footway would continue

---

<sup>269</sup> NR 190 at page 35

that already present on the north side of Station Hill and would not unduly inconvenience RMG or other road users.

- 5.38.38 Although the Ramblers dispute whether Network Rail have established the ownership of the narrow grass verge on the north side of Station Hill, plot 04 on replacement sheet 38 is described as 'public highway'. The location of the proposed crossing point and the position and width of the proposed footway would be matters for detailed design in consultation with the Highway Authority, who would be required to certify that the works were of a standard acceptable to it before the Order could take effect as regards E54. The provision of a footway within the boundaries of the highway would not be an impediment to the proposal.

#### **SOM4(b) Impacts on other users**

- 5.38.39 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.38.40 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.38.41 Arger Fen SSSI and Tiger Hill and Arger Fen LNRs are located approximately 2.7Km to the north-east of Bures Hamlet. The proposed closure of E54 is unlikely to have any adverse impact upon the SSSI or the LNRs or the features for which they have been designated.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.38.42 Footpath EX/70/30 does not cross agricultural or forestry land; consequently, there would be no adverse impacts upon such land.
- 5.38.43 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E54.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.38.44 No representations were made regarding this matter.

#### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.38.45 Given the urban character of the crossing, it is unsurprising that it provides a utilitarian function for those who reside on the western side of the railway who wish to travel to the eastern side of the village or onwards to Bures St Mary. The crossing is also used for recreational purposes as a means of access into the wider countryside by ramblers such as Mr Evans.
- 5.38.46 The main issues regarding the crossing related to the safety of pedestrians when crossing Station Hill from south to north from the footway on the western side of the underbridge.
- 5.38.47 It was the objectors' case that crossing Station Hill from south to north was dangerous as a pedestrian standing at the dropped kerb slightly to the west of the overbridge could not see whether a vehicle was approaching due to the obstruction to sight caused by the bridge structure and the curvature of the road. The dropped kerb on the footway is the most appropriate crossing point to consider given that no works are proposed on the western side of the overbridge; this point, along with the corresponding dropped kerb on the northern side of Station Hill provides a crossing point which would be suitable for most users.
- 5.38.48 Both the Ramblers and Network Rail submitted technical notes regarding the forward visibility available to the driver of a vehicle approaching the overbridge on the south side of Station Hill and proceeding in a westerly direction. Mr Russell's calculations<sup>270</sup> suggested that a stopping site distance (SSD) for a car travelling at the 85<sup>th</sup> percentile speed of 27.5mph was 39m. Mr Russell's view was this could not be achieved and that the SSD calculated in accordance with MfS was the appropriate standard to apply.
- 5.38.49 Network Rail's consulting engineers acknowledged that MfS provided guidance on SSD and submitted that the document "Assessment of Walked Routes to School" also provided guidance; in that document SSD are considered to be those set out in the Highway Code. The SSD of 39m calculated by the Mr Russell is disputed as Network Rail say this does not include the necessary allowance for bonnet length provided for in MfS. Network Rail say the adjusted figure should be 34.6m<sup>271</sup>. Network Rail submit that the adjusted SSD is achievable for a vehicle travelling westbound and that a pedestrian could cross the road safely.
- 5.38.50 The plan which accompanies Network Rail's technical note shows the driver's eye line as it sweeps through the westbound curve of the road. A series of cross hatches indicates the forward visibility available to a driver travelling on that eye line. This plan suggests that a driver approaching the bridge will not be able to see a pedestrian at the dropped kerb until the vehicle is relatively close to the bridge or the pedestrian is in the carriageway.
- 5.38.51 A pedestrian standing at the dropped kerb on the south-western side of the bridge will not know whether a vehicle is approaching unless he or she

---

<sup>270</sup> OBJ 148 inquiry document 15 Visibility Technical Note

<sup>271</sup> NR 174 paragraph 3.2.5



steps out into the road due to his or her view being obstructed by the presence of the bridge support and the curvature of the road. It may be that vehicles approaching the bridge portal at 30mph can achieve the required SSD found in the Highway Code, but a pedestrian standing on the footway to the west of the bridge will be in no position to know whether a vehicle was approaching the bridge without stepping into the road. This is not a safe option for pedestrians being diverted from the current crossing point at E54; as the proposed alternative route is not safe, it is not suitable for use by those who currently use E54.

5.38.52 The Equality and Diversity Overview report rating for E54 was green and noted that the narrow approach paths and stiles on the current route meant that closure of the crossing and redirection of the footpath would not reduce accessibility. No DIA was carried out. However, those who may have found difficulty in negotiating the physical features of the current route would have to contend with the limitation of the proposed route in terms of safety. In this respect, those with protected characteristics would be affected to the same extent as the rest of the population.

5.38.53 Although the current crossing point at E54 is not without some risk to pedestrians, Network Rail's own assessment shows this to be at the lower end of the risk spectrum due to extensive sightlines in both directions and the limited service along the branch line. The proposed alternative means of crossing the railway is not suitable on safety grounds. There are no proposals being put forward to mitigate the risk which users of the current crossing would be exposed to when crossing Station Hill from south to north on the western side of the railway.

### **Overall conclusions**

5.38.54 Considering all the above, and all other matters raised in relation to E54, I conclude that the Secretary of State should not include E54 within the Order as the proposed alternative does not provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.39 **E56 Abbotts**

### **Description of the crossing**

- 5.39.1 Footpath EX/158/27 crosses the Liverpool Street to Norwich line to the south west of the village of Ardleigh. The footpath commences on Chapel Croft and runs in a generally easterly then south-easterly direction and provides a link from the village centre to the public rights of way network which crosses the arable land to the south-east of the railway.
- 5.39.2 E56 is approached via an unsurfaced path which runs in an alleyway between houses on Chapel Croft before turning south-east to cross an arable field to the railway. On the south-western side of the railway, FP EX/158/27 makes a junction with FPs EX/158/28 and EX/158/42 which respectively run over the arable fields in a generally easterly and south-easterly direction. The paths on the western side of the railway are well defined through the crops whereas the definitive line of FP EX/158/27 was not visible on the ground, with the used line of the path following the field boundaries.
- 5.39.3 E56 has been unavailable for use since around 2006<sup>272</sup>. The crossing is currently closed under a TTRO as the sighting distance for a pedestrian standing at the down-side decision point is insufficient when observing a train approaching in an up or down direction. The crossing had stiles in the railway boundary fence and decking between the rails. The stiles and decking had been removed around June 2016. The ALCRM score of E56 is M13 due to the temporary closure.
- 5.39.4 E56 had been a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 100mph. When the crossing had been open, the inadequate sighting had been mitigated by whistle boards, but which created a level of noise which was unacceptable to Tendring District Council. An overlay MSL had been trialled but had been found unsatisfactory; an integrated MSL would be expensive and require adjustment to the positions of existing signals.

### **Description of the proposal**

- 5.39.5 It is proposed to close E56 to all users and extinguish the PROW over the crossing, together with a section of FP EX/158/27 to the north-west of the railway and sections of FPs EX/158/28 and EX/158/42 to the south-east of it.
- 5.39.6 Users approaching the crossing from FP EX/158/42 would be diverted west along FP EX/158/49 and then along the footway of Station Road to the full barrier CCTV crossing. Having crossed the railway, users would then continue along the footway to the centre of Ardleigh.

---

<sup>272</sup> OBJ 148 inquiry document 11

- 5.39.7 Users who would have approached E56 along FP EX/158/27 (north of the level crossing), would instead be diverted south on a newly created 2m wide unsurfaced footpath in the field margins. The existing route of FP EX/158/27 would be extinguished. Users would then be diverted northeast along a newly created 2m wide unsurfaced footpath before joining Little Bromley Road to cross the railway at the associated road bridge. Users would continue east along Little Bromley Road before heading south along a new 2m wide unsurfaced cross-field footpath which would provide access to the residual lengths of FPs EX/158/27 and EX/158/42.
- 5.39.8 The sections of FPs EX/158/28 and EX/158/42 that lie to the west between the level crossing and the new cross-field footpath would be extinguished. Level crossing infrastructure at E56 would be removed and the railway boundary fence would be secured to prevent trespass onto the railway.
- 5.39.9 Due to the presence of a Scheduled Ancient Monument within the vicinity of the railway, wayfinding signs for the realigned paths would be erected on existing features to remove the need for ground disturbance.

### **The Case for Network Rail**

- 5.39.10 It acknowledged that E56 has been closed under a TTRO since 2006. The prolonged closure, and the fact it was not re-opened in 2012 when there had been a 'commitment' from Network Rail that it would be<sup>273</sup>, formed a key part of Mr Coe's evidence in respect of this crossing.
- 5.39.11 Mr Kenning's evidence was that in 2005 E56 had been assessed and found to have insufficient sighting and whistle boards had been installed by way of mitigation. However, the whistle boards were deemed to have an undesirable noise impact upon residents such that Tendring District Council considered service of a noise abatement notice. The whistle boards were removed and E56 temporarily closed.
- 5.39.12 Mr Kenning explained that an overlay MSL system known as WaveTrain had been trialled but was found to be unsuitable due to the proximity of emergency crossover points in the vicinity of E56. Mr Kenning acknowledged that an integrated MSL system might be an option but that would involve moving a protecting signal already on the line, so that any train held at the signal would not stand back over the crossing. It is not the case, therefore, that Network Rail has simply closed E56 and failed to consider how it can be reopened. Rather, this crossing illustrates the very real difficulties that can arise in finding the right solution to manage risks at a particular crossing – particularly in a complex area on the network.
- 5.39.13 The proposal provides a diversion to both the north and south of the level crossing, providing flexibility for users depending on their origin and destination. Ms Tilbrook explained that, whilst the diversion routes are longer than the route over the level crossing, this is not considered to be an undue inconvenience – due to the long-distance nature of ongoing routes in

---

<sup>273</sup> OBJ 148 inquiry document 11

the area; the additional distances which pedestrians would be required to undertake would vary between 30m and 350m. The footpaths in the area are rural routes considered to be used primarily for recreational purposes; it is not considered that the proposed alternatives would inconvenience those who would otherwise use the crossing.

- 5.39.14 No issues with regard to the proposals were raised in the stage 1 RSA. A road safety check undertaken by ECC highlighted potential problems with vegetation alongside Little Bromley Road where additional vegetation management may be required to facilitate 'step off'. Commuted sums for such additional management have been agreed with the Highway Authority.
- 5.39.15 It is not considered that there are any road safety issues associated with the proposals; ATC data collected on Little Bromley Road showed an average traffic flow of 355 vehicles per day at an 85<sup>th</sup> percentile speed of 32.8mph where the posted limit is 30mph. The proposals are considered appropriate in relation to such traffic flows. The position where the new footpath would join Little Bromley Road is some way from the junction with the main road. Due to the designation of the area as an Ancient Monument the wayfinding signs will be erected on existing features to remove the need for ground disturbance.
- 5.39.16 As regards the trees growing on the south-eastern boundary of the field, it is considered that if the trees were to be damaged by the wind, it is more likely that they would be blown towards the railway line due to the prevailing direction of the wind. Responsibility for the safe condition of the trees remains with the landowner.
- 5.39.17 It is considered that the proposed footpaths would provide suitable and convenient alternative routes for those who would wish to use E56, and that the Order may properly be confirmed without modification.

### **The Case for the Objector who did not appear at the inquiry**

#### **Peter Leslie Harris (OBJ 103)**

- 5.39.18 The proposed footpath would run adjacent to the eastern boundary of the railway adjacent to a line of poplar trees. Creating a footpath in this location would give rise to a liability that the landowner currently does not have, both from falling trees and from damage to the surface of the field from rabbits living on the railway embankment.
- 5.39.19 The poplar trees should be felled at Network Rail's expense and a rabbit-proof fence erected along the boundary of the railway to limit the liability which would arise as a result of these proposals.

## **The Case for the Objector who did appear at the inquiry**

### **The Ramblers (OBJ 148)<sup>274</sup>**

- 5.39.20 E56 has a peculiar history having been closed under 'temporary' powers since 2006; Mr Coe has persisted in seeking the re-opening of this crossing as evidence by two letters from the DfT to Douglas Carswell MP which suggested MSL technology would be installed. Mr Kenning did not dispute Mr Coe's version of events noting that in 2012 E56 had been chosen as a trial site for WaveTrain. This system had been installed in its entirety but failed to work to an acceptable standard.
- 5.39.21 The unavailability of this crossing for over 12 years represents an unlawful obstruction of the highway. If safety is an issue at this crossing, the Network Rail should have pursued closure or diversion under the specific provisions of the 1980 Act.
- 5.39.22 This crossing is an important link in the local network and that fact should not be overlooked due to it being unavailable for so long. Mr Coe's evidence was that this was an important connecting point leading to many onward footpaths in the area; that people were trespassing onto the railway at E56 (despite its closure) strongly indicates the value of this crossing point to the community.
- 5.39.23 For would-be users of E56, the alternative route is not a suitable and convenient replacement. It is too long and convoluted and requires users to walk over a narrow rail bridge to the north-east of the crossing. Mr Coe expressed concerns over the safety of this road bridge and, in particular as to how groups of walkers would navigate this section. Mr Coe estimated that the proposed alternative would add approximately 15 minutes to a journey. It was not clear from the design freeze exactly where users would enter Little Bromley Road. Nor is it clear whether the RSA auditors assessed the safety of this access point.
- 5.39.24 Finally, although Mr Kenning provided technical advice on the signalling complications of the site and why it would be expensive to bridge the railway line at this location, Network Rail is not seeking to justify its proposal to close this crossing on the basis that other mitigation measures, or grade-separated solutions, are not feasible, but rather it is simply alleging that E56 can be closed because a suitable alternative has been found. This technical evidence is therefore irrelevant for purposes of this inquiry.

### **Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

---

<sup>274</sup> OBJ 148 W-009 Mr Coe

- 5.39.25 Access to property would not be diminished as a result of the proposal. The impact upon Mr Harris' landholding would be mixed. On the one hand the proposal would provide some benefit by removing the cross-field part of FP EX/158/27, however a greater burden would be imposed upon the land as the proposed alternative north of the railway line would run over around half of the perimeter of the field.
- 5.39.26 As regards the land to the south east of the railway, existing cross-field paths will be replaced with other cross-field paths, albeit in a north - south orientation. This may have implications for land management operations.
- 5.39.27 Although it may not have been clear to the Ramblers where the path would emerge on Little Bromley Road, the design freeze plan shows that the footpath would run along the base of the overbridge support bank and emerge on Little Bromley Road to the west of Glebe Corner; it is not intended to make use of the steps in the corner of the field which lead up to the footbridge.
- 5.39.28 There do not appear to be any matters in this regard which could not be addressed by means of detailed design or the provisions for compensation.

#### **SOM4(b) Impacts on other users**

- 5.39.29 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.39.30 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.39.31 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites; consequently, there would be no impact upon such sites arising from the proposal.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.39.32 The existing line of FPs EX/158/42 and EX/158/49 run over land designated as a Scheduled Ancient Monument known as the crop mark site south of Ardleigh. The proposed new footpath which will link FPs EX/158/42 and EX/158/28 would also run over the same designated area. It is unlikely that the proposed footpath will have an adverse impact upon the designated area however, protection for the site will be provided by a condition attached to the planning permission if the Order is made.

5.39.33 Other than the permanent removal of the infrastructure associated with the pedestrian crossing, the renewal of fencing at the railway boundary and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of E56.

**SOM4(g) Any other environmental impacts including noise and health**

5.39.34 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.39.35 There was some discussion at the inquiry as to the reasons why a technological solution had not been deployed to mitigate insufficient sighting at the crossing. Network Rail provided such information in response to Mr Coe's submissions on the duration of the closure, the attempts made to install WaveTrain and the feasibility of a footbridge. However, these were not matters which were before the inquiry for determination.

5.39.36 The principal issues between the parties were the additional length which users would be required to walk as a result of the proposals and concerns over the safety of pedestrians having to walk along Little Bromley Road.

5.39.37 Those travelling towards Ardleigh from the south-east on either FP EX/158/42 or FP EX/158/28 would have two options available to them; either to travel west to Station Road or north to Little Bromley Road. Travelling west to Station Road from FP EX/158/42 would add approximately 30m to a journey with a corresponding increase in journey time to arrive at the junction of Station Road and Church View. Those approaching the crossing on FP EX/158/28 would face an additional journey of around 350m when using Station Road CCTV crossing. Those travelling north via the overbridge would increase their journey by approximately 300m.

5.39.38 The current function of E56 appears to be to facilitate access to the public rights of way network to the south-east of it or to facilitate access to the centre of the village if approaching from the south-east. The proposed new routes would retain the ability of users to undertake such journeys. Those engaged in recreational walking within the area are unlikely to be inconvenienced by increases in journey distances. The proposal would also provide for a short circular walk to the south-east of Ardleigh incorporating Station Road, Colchester Road and Little Bromley Road.

5.39.39 Concern was expressed over the safety of pedestrians walking along Little Bromley Road as a result of the diversion. A footway exists on either side of the road as it passes over the overbridge and the verge on the south side of Little Bromley Road is of sufficient width to provide pedestrians with a place to step off the carriageway if a vehicle is approaching. There is also a verge of sufficient width for pedestrians to be able to enter and exit Little Bromley Road from the field without having to step into the carriageway. Little

Bromley Road appears to be lightly trafficked with the majority of vehicles being driven at a little above the posted speed limit. Whilst road walking may not be as preferable to a cross-field footpath, the footway over the bridge provides a safe means for pedestrians to negotiate the railway.

5.39.40 No DIA was undertaken in relation to this proposal. Both the scoping report and the Equality and Diversity Overview report rating for E56 was green. An increase in journey distance may be an issue for some users but taking into account the rural nature of the route and its relative isolation, there should be no disproportionality introduced by the proposed changes. The inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.39.41 Taking all these matters into account, I consider that the proposed paths would provide suitable and convenient alternatives for those who would have used E56 were it available.

### **Overall conclusions**

5.39.42 Considering all the above, and all other matters raised in relation to E56, I conclude that the Secretary of State should include E56 within the Order as the proposed routes would provide those who would wish to use E56 with a suitable and convenient alternative means of crossing the railway.



## 5.40 **H01 Trinity Lane**

### **Description of the crossing**

- 5.40.1 Trinity Lane is a public road that runs from High Street in the west across the Trinity Lane manned level crossing to give access to Lee Valley Regional Park to the east of the crossing. Footpath 54 commences at the end of Trinity Lane approximately 10m to the east of the railway and runs in an easterly direction through the Lee Valley Regional Park. The land to the north of the footpath is part of the Lee Valley Ramsar and Special Protection Area (SPA) and Turnford and Cheshunt Pits SSSI. The designated area is located approximately 80m from the crossing at its nearest point.
- 5.40.2 The level crossing also provides vehicular access to two allotment garden sites. The crossing is a manually controlled gated crossing and a level crossing keeper is present who will open the gates if required for vehicles, a person who is disabled, or any member of the public that asks. The crossing formerly comprised the vehicular crossing with a pedestrian crossing with its own wicket gates to one side. The pedestrian crossing has been removed following the construction of a stepped footbridge a little to the south of the former crossing.
- 5.40.3 The land to the west of the railway is occupied by densely populated residential housing, with the nearest property within 20m of the crossing. The land immediately east of the railway comprises allotment gardens to the north and south of FP 54 with the remaining land to the east of the railway being part of the Lee Valley Regional Park.
- 5.40.4 H01 Trinity Lane vehicular crossing has an ALCRM score of D6. The crossing has vehicular gates that are kept locked and controlled by a crossing keeper situated on site. Any user makes a request to cross to the crossing keeper who in turn finds a suitable slot between trains to protect any movement by turning the signal on approach to red, to stop all train movements. The railway comprises two lines of rails and carries passenger and freight trains at speeds of up to 80mph.
- 5.40.5 A census of use undertaken in April 2017 showed use by average of 7 cars, 2 vans, 4 cycles and 23 pedestrians using the crossing in 24 hours<sup>275</sup>. Sightlines in all directions are sufficient to meet industry standards. There have a number of incidents of misuse at this crossing<sup>276</sup>.

### **Description of the proposal**

- 5.40.6 It is proposed to downgrade the public vehicular crossing to a public bridleway and to extinguish public vehicular rights over the crossing and over that part of Trinity Lane immediately to the east. Network Rail will grant private vehicular rights over the crossing to enable access to be maintained to the allotment gardens. The crossing keeper will be retained

---

<sup>275</sup> NR31/5

<sup>276</sup> NR31/1 page 227 - 228

to operate the gates for users of licensed vehicles and for those seeking to cross the railway on horseback, or those on foot who are unable to negotiate the stepped access bridge.

- 5.40.7 As the crossing will be retained as a public bridleway, cyclists and pedestrians will be able to use the crossing under the control of the crossing keeper. Alternatively, cyclists and pedestrians can cross the railway via the stepped footbridge.

### **The Case for Network Rail**

- 5.40.8 The Trinity Lane level crossing will be downgraded to a public bridleway level crossing with private vehicular rights granted to authorised users. Pedestrians can also make use of the existing stepped footbridge immediately adjacent to the crossing.
- 5.40.9 Although there is a public road over the level crossing this road is a dead end on the east side of the railway. Vehicle users will be granted private rights to access amenities like the allotments on the east side of the railway. Non-motorised users will be unaffected by the proposal whilst any risk posed to the resilience of the railway by public vehicular traffic would be eliminated.
- 5.40.10 As regards continuing vehicular access for allotment holders who currently use Trinity Lane as a means of access to their plots, Network Rail will grant private rights of access over the railway for authorised users as defined in Article 26 (3) of the Order which provides for the introduction of a permit system to authorise individuals or their vehicles to cross the railway for particular purposes. Tenants at will, and those without a long-term interest in the land (such as the allotment holders at Trinity Lane) would not be recorded individually by Network Rail owing to frequent changes in details but it is intended to grant a licence to the owner of the allotments (Broxbourne Borough Council) whose invitees (the allotment holders) will be able to cross the railway under the supervision of the crossing keeper. It is also intended to grant a licence to the Lee Valley Regional Park Authority for access to the park<sup>277</sup>.
- 5.40.11 A DIA was not considered necessary at this crossing as pedestrian access over the railway is maintained by the retention of the crossing keeper and the ability of pedestrians to cross the railway under supervision.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Mr R Littlechild (OBJ 052)**

- 5.40.12 This crossing has been in existence since 1842 and has been used personally for 68 years. The crossing gives access to the Lee Valley Regional Park and to the 104 allotment plots on the east side of the railway.

---

<sup>277</sup> NR 153

Allotment holders require vehicular access to move heavy objects to the plots; the crossing should be downgraded to a Byway.

- 5.40.13 The rushed construction of a footbridge has caused problems as it is inaccessible to the disabled, parents with pushchairs and plot holders with wheelbarrows who still require the services of the crossing keeper. Network Rail had proposed to build a ramped access bridge, but the ramps have been omitted.
- 5.40.14 Network Rail have not given sufficient consideration to the requirements of the many people who regularly use this crossing. The offer of a private right of way is at the whim of the railway owner and can be withdrawn at any time and does not compensate for the loss of the public right of access.

**Debra Stainton (OBJ 171)**

- 5.40.15 Objection is made to the downgrading of the crossing and the removal of the crossing keeper. When the new bridge was built crossing users were discouraged from asking the keeper to assist with crossing the railway and many people now do not use the crossing as they are unaware that the keeper will enable pedestrian access.
- 5.40.16 Many users struggle with the 104 steps on the stairs and the bike channel is badly designed so many people carry their bikes up the steps. Access should not be restricted to the stairs; allotment holders will not be able to access their plots, and crossing users with pushchairs, the less mobile or infirm will be prevented from accessing the park.

**Nicky Dawn Terrell (OBJ 185)**

- 5.40.17 The crossing has been used personally for 26 years for walking dogs and should not be closed. The stepped bridge recently built cannot be used by the disabled or allotment holders; the crossing needs to be retained so that those unable to use the bridge can still access the Lee Valley Regional Park.

**Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

- 5.40.18 The proposal is unlikely to have any adverse impact upon landowners on the eastern side of the railway as vehicular access over the railway at H01 for the Lee Valley Regional Park Authority and Broxbourne Borough Council would to be retained under article 26 (3) of the Order. Landowners and their invitees would therefore enjoy the same level of vehicular access as at present, albeit under licence from Network Rail as opposed to by public vehicular rights.
- 5.40.19 Concerns were expressed by objectors with regard to continued pedestrian access over H01 under this proposal. Network Rail have confirmed that the

crossing keeper is not being withdrawn and that those individuals who cannot manage the stepped access bridge will be able to call on the assistance of the crossing keeper when crossing the railway. As the public status of the crossing is to be downgraded to that of a public bridleway, a PROW on foot over the crossing will remain as a public bridleway carries a PROW on horseback and on foot.

**SOM4(b) Impacts on other users**

5.40.20 The strategic case sets out the way in which Network Rail and rail users would benefit from the proposed alterations to the level crossing estate.

**SOM4(c) Impact on flood risk**

5.40.21 There is no indication that the proposal would have any impact on flood risk.

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.40.22 The crossing is adjacent to the boundary of the Lee Valley Ramsar and SPA and Turnford and Cheshunt Pits SSSI. As the proposal is for a downgrading of the public status of the crossing and does not involve any infrastructure works at this location, it is highly unlikely that the proposal would have any adverse impact upon the Ramsar, SPA or SSSI sites, or the reasons for which they have been designated.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.40.23 The proposal is not located within agricultural or forestry land. No works are planned at the site of the crossing. It is unlikely that there would be any impacts in this regard arising from the proposal.

**SOM4(g) Any other environmental impacts including noise and health**

5.40.24 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.40.25 Network Rail are not proposing an alternative route as a means of crossing the railway. Pedestrian users will retain the right to cross at H01 as part of the public bridleway, although the stepped access bridge would provide an optional means by which the railway can be crossed by some users.

5.40.26 The public vehicular right of way over the crossing will be extinguished with vehicular access to the Allotment site and Lee Valley Regional Park via the crossing being permitted by licence.

- 5.40.27 The Equality and Diversity Overview report rating for H01 was green and no DIA was carried out. Persons who due to their protected characteristics may have difficulty in negotiating the stepped bridge at Trinity Lane will be able to cross the railway on the level with assistance from the crossing keeper.
- 5.40.28 The Secretary of State can be satisfied that there is no indication that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population), and that the inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

**Overall conclusion**

- 5.40.29 Considering all the above, and all other matters raised in relation to H01, I conclude that the Secretary of State should include H01 within the Order as no alternative route is required to be provided.

## 5.41 **H02 Cadmore Lane**

### **Description of the Crossing**

- 5.41.1 Cheshunt FP 9 crosses the Liverpool Street to Ely railway line in Cheshunt with Cheshunt railway station being located approximately 700m to the south of the crossing. Footpath 9 commences at the eastern end of Cadmore Lane, immediately to the west of the railway and runs in a generally easterly direction for approximately 360m to its junction with Cheshunt FP 55.
- 5.41.2 The land to the north of the footpath is part of the Lee Valley Ramsar and SPA and Turnford and Cheshunt Pits SSSI. The designated area is approximately 80m from the crossing and encompasses numerous large water bodies. The designated areas lie to the east of the railway crossing whilst the land to the west of the railway is occupied by an industrial / trading estate beyond which is an area of residential housing. The nearest residents are located approximately 180m west of H02. There had been a number of incidents of misuse at the crossing.<sup>278</sup>
- 5.41.3 The crossing was physically closed in 2014 and a fully accessible foot and cycle bridge built adjacent to its former location.

### **Description of the Proposal**

- 5.41.4 H02 is regarded by Network Rail as a public footpath crossing although the Highway Authority considers that the crossing may be part of the vehicular highway of Cadmore Lane. The Highway Authority considers that there may be an error on the definitive map as it shows FP 9 commencing on the western side of the railway. As part of the proposal, any existing public rights over H02 would be extinguished with a PROW on foot being dedicated over the fully accessible footbridge which has been constructed.

### **The Case for Network Rail**

- 5.41.5 Network Rail seeks to regularise the existing arrangement which has been available on the ground for some years. The footpath crossing has been closed, informally, by agreement with the Highway Authority. Through the order, Network Rail seeks to extinguish the PROW over the railway and to formally dedicate a PROW over the footbridge which is currently in use.
- 5.41.6 Those users who would have approached H02 from either side of the railway would be diverted approximately 50m south to the existing footbridge where they could cross the railway by means of steps or a fully accessible ramp. Having crossed the railway, users would then re-join FP 9.
- 5.41.7 The DIA scoping assessment determined that the proposal fell outside of the red – amber – green rating as all disproportionate impacts resulting

---

<sup>278</sup> NR31/1 pages 229 - 230

from the closure of Cadmore Lane crossing had been mitigated by the installation of a fully accessible footbridge.

### **Objections and Representations**

- 5.41.8 The objections made on behalf of the Kings Arms and Cheshunt Angling Society (OBJ/6) and S Parker (OBJ/7) were withdrawn on 20 July 2017. No objections to the proposal remained outstanding at the opening of the inquiry.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.41.9 The proposal has no impact upon adjacent landowners, local businesses, utility providers and statutory undertakers and there would be no adverse impact upon those parties' undertakings. The accessible bridge has been constructed within NR's own landholding.
- 5.41.10 Members of the public who may have wished to cross the railway at this point have the opportunity to do so via the ramped access or the steps of the bridge.

#### **SOM4(b) Impacts on other users**

- 5.41.11 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.41.12 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.41.13 The former crossing is in the vicinity of the Lee Valley Ramsar site and the Turnford and Cheshunt Pits SSSI with the crossing and the proposed alternative route being approximately 80m from the SSSI boundary. The fully accessible bridge has been constructed and is in use; it has no impact upon the SSSI.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.41.14 The bridge is located wholly within NR land; it therefore has no impact upon agricultural land or forestry. The question of the impact the bridge would

have upon the landscape will have been considered prior to the grant of planning permission for its construction.

**SOM4(g) Any other environmental impacts including noise and health**

5.41.15 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.41.16 The Equality and Diversity Overview report rating for H02 was green and no DIA was carried out. The level crossing at Cadmore Lane has been closed since 2014. The bridge has been constructed with ramps at a gradient of not more than 1:20 to provide a means of crossing the railway which is accessible to all persons.

5.41.17 The Secretary of State can be satisfied that there is no indication that people with protected characteristics would be disproportionately affected (over and above the effects likely to be experienced by the rest of the population), and that the inclusion of this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.41.18 Taking all these matters into account, I consider that the proposed alternative route is suitable and convenient as far as those who would have used the crossing prior to closure are concerned.

**Overall Conclusions**

5.41.19 Taking into account all the above, and all other matters raised in relation to H02 Cadmore Lane, I conclude that the Secretary of State should include H02 within the Order as the bridge which has been constructed provides a suitable and convenient alternative for existing users of the crossing.



## 5.42 **H04 Tednambury**

### **Description of the crossing**

- 5.42.1 Footpath 3 crosses the West Anglia Main Line railway from Liverpool Street to Ely north of the town of Sawbridgeworth. The footpath commences on Spellbrook (a spur from the A1184) and provides a link from the road spur to the public rights of way network to the east of the railway. Footpath 3 is in a predominantly rural setting with the land in the vicinity of the path being arable or pastureland.
- 5.42.2 H04 is approached from Spellbrook over an unsurfaced path running in a south easterly direction over an arable field and through a belt of woodland. From the railway the footpath continues as an unsurfaced path running in a generally south-easterly direction over grazing pasture to the River Stort where it makes a junction with other footpaths which run north and south along the eastern riverbank and another footpath which continues in an easterly direction.
- 5.42.3 H04 has stiles in the railway boundary and decking furniture at the crossing to enable pedestrians to cross safely. H04 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. Whistle boards and a COVTEC audible alarm are present at the crossing to mitigate insufficient sighting on the down side of the railway when viewing a train approaching in the down direction. The railway at this crossing comprises two lines of rails and carries passenger and freight trains at line speeds of up to 80mph. The ALCRM score for this crossing is B4<sup>279</sup>. A 9-day camera census in July 2016 recorded 24 pedestrians using the crossing of whom one was an accompanied child, two were elderly and the remainder were adults. Two bicycles were recorded as being wheeled over the crossing<sup>280</sup>. There have been no reports of misuse or user error at this crossing.

### **Description of the proposal**

- 5.42.4 It is proposed to close H04 to all users, extinguishing the PROW over the crossing and that part of footpath 3 to the east of the crossing between the railway and the River Stort.
- 5.42.5 Current users of H04 wishing to cross the railway from the west will be diverted south for approximately 150m alongside the railway on a new 2m wide unsurfaced footpath within Network Rail land crossing a drain by means of a footbridge to an existing overbridge which carries the private access road to Tednambury Farm and Grove Cottage. The diversion would then proceed eastwards along the private track before turning south-east then north-east for approximately 420m as a field edge path to join FPs EX/37/22, EX/37/38 and EX/37/41 at the River Stort. The proposed

---

<sup>279</sup> NR31/5 based on a risk assessment conducted in April 2018

<sup>280</sup> NR25 3267-LON-H04 p6

diversion would add around 170m to a journey between the current crossing point and the river.

- 5.42.6 The crossing infrastructure present at H04 would be removed and a 1.8m high chain link fence would be provided on both sides of the railway to prevent trespass. On the western side of the railway, the new fencing will extend between the existing crossing point and the overbridge.

### **The Case for Network Rail**

- 5.42.7 Following a scoping study, a DIA was not considered necessary for this site due to the restricted accessibility of the current crossing. Accessibility is limited by the presence of stiles, narrow kissing gates and overgrown, grassy pathways and inclines that would significantly undermine the ability of those with limited mobility or those who use a wheelchair to access the crossing. This crossing is entirely inaccessible to wheelchair users or those with pushchairs.
- 5.42.8 The public rights of way network in the area lies generally to the east of the level crossing with north – south access alongside the eastern bank of the river. The public rights of way have a high degree of connectivity and form long distances routes in the area. It is possible to undertake a route of over 5,500m to the east utilising the footpath over the level crossing. It is considered that the crossing is used regularly by a relatively small number of people to access the wider footpath network. The proposal retains connectivity albeit with an increase in journey distances of approximately 180m; the proposal is considered suitable and convenient in the context of the purpose and characteristics of the existing route.
- 5.42.9 Mr Edmonston, the landowner affected by the proposed new PROWs, does not object to the closure of the level crossing *per se*. He does, however, object to the proposed diversion route. He has proposed an alternative route, which he puts forward as a modification to the Order.
- 5.42.10 Ms Tilbrook explained in evidence why she considers that the new PROWs proposed by NR would provide a suitable and convenient replacement for existing users of the level crossing. In respect of potential flooding concerns raised by Mr Edmonston with regard to the proposed path to the south of his property, Ms Tilbrook confirmed that this had been considered through the assessment work undertaken to prepare the EIA Screening Request Report<sup>281</sup>, and specific details of the proposals had been given to the Environment Agency and Hertfordshire County Council for comment, who had not raised any concerns.
- 5.42.11 Ms Tilbrook also confirmed that the new footpath would sit within a mixture of flood zone 2 and 3 – and that the existing footpaths were impacted by the same flood zones. Of the four options originally considered<sup>282</sup> arriving at a final design to be taken forward was a difficult balancing act between the

---

<sup>281</sup> NR 155

<sup>282</sup> NR32/2 tab 2 page 193

competing needs of all parties. Whilst the route being proposed impacted upon Mr Edmonston, the orange route previously considered would have impacted upon his neighbour at Grove Cottage. The alternative originally suggested by Mr Edmonston (north towards Spellbrook Lane or south to Kecksys Farm<sup>283</sup>) would have resulted in unacceptably long diversions.

5.42.12 Ms Tilbrook considered that the route promoted by Network Rail would be suitable and convenient for users of the crossing as it would run in a generally south-easterly direction which was the natural direction of travel whereas although Mr Edmonston's proposal made at the inquiry<sup>284</sup> would deliver users to the river, it was a more convoluted route.

5.42.13 Whilst Network Rail maintains that the Order proposals would provide a suitable and convenient replacement for existing users for the purposes of s.5(6) of the 1992 Act, it has also confirmed, in its response to the consultation on Mr Edmonston's proposal that it would not object to the Order being modified in accordance with that proposal, if the Secretary of State were to so direct.

5.42.14 Network Rail maintains, therefore, that the Order may properly be confirmed, either without modification or with the modification promoted by Mr Edmonston.

### **The Case for the Supporter**

#### **Oram Court Residents (SUPP 06)<sup>285</sup>**

5.42.15 Oram Court is close to the Tednambury railway crossing and adjacent to the whistle board which provides a warning to users of the crossing. The residents are disturbed by the noise caused by train horns outside the NTQP, seven days a week. The residents support the closure of the crossing.

### **The Case for the Objector**

#### **Darren Edmonston (OBJ 128)**

5.42.16 No objections are raised to the closure of H04. However, the route proposed by Network Rail would impact upon the quiet enjoyment of the residential property.

5.42.17 The current alignment of footpath 3 runs to the north and the rear of Tednambury Farmhouse and does not impact upon the outlook of the house. The route proposed by Network Rail would run to the south and front of the farmhouse and users of the path would be in full view of the house and gardens. The movement of people to and fro in full view of the house and gardens will impact upon the privacy currently enjoyed by the

---

<sup>283</sup> NR32/2 tab 7 p437

<sup>284</sup> OBJ 128 inquiry document 1

<sup>285</sup> SUPP 06 did not appear at the inquiry

owner and occupier. The diversion proposed by Network Rail would also pass in closer proximity to the house than the current footpath does which increases concerns over security.

5.42.18 The route proposed by Network Rail in the field margin to the south of the house would run over land which is wet year-round and is particularly sodden between November and March. This is not considered to be a suitable alternative for those who wish to access the river and the footpath network to the east of the river.

5.42.19 A variation on the route proposed by Network Rail is put forward as an alternative for the Secretary of State's consideration. This proposal would direct path users north along the access road towards Grove Cottage and link with the path already in use which runs around the northern and eastern boundary of the cottage and on to the river. Consultation with interested parties (Network Rail, Ramblers and the Highway Authority) have not resulted in objections to it<sup>286</sup>.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

5.42.20 The proposal would not prevent access to property or prevent statutory undertakers going about their undertakings. In relation to owners and occupiers of the land crossed by the proposed footpath, the greatest impact would be upon Mr Edmonston and his desire for privacy and security not to be diminished. Footpath 3 currently runs to the north of Mr Edmonston's residence and has no impact upon him in these respects. It is Mr Edmonston's contention that the privacy and security currently enjoyed at the property would be diminished if the proposed diversion is included in the Order.

5.42.21 Although compensation for disturbance or loss would be applicable as a result of the diversion and any adverse impacts may be mitigated by detailed design of fencing or screening planting, Mr Edmonston proposes an alternative route by way of a solution to these issues.

#### **SOM4(b) Impacts on other users**

5.42.22 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

---

<sup>286</sup> OBJ 128 inquiry document 2

#### **SOM4(c) Impact on flood risk**

- 5.42.23 The eastern and western ends of FP 3 currently lie within flood zones 2 and 3. The route proposed by Network Rail would place that part of the new footpath between points P045 to P040 within flood zone 3, whereas Mr Edmonston's proposal would not encroach upon flood zones 2 and 3 to any greater extent than users are exposed to on the current alignment of FP 3. Although parts of the proposed footpath would lie within flood zone 3, there are no works associated with the proposal which would increase flood risk.
- 5.42.24 The proposed footpath will require the construction of a footbridge over a drain to the south-west of the crossing. The limited nature, size, location and duration of the works are unlikely to have any significant impact on flood risk or water flows or levels.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.42.25 The crossing is located approximately 110m to the south-west of Little Hallingbury Marsh SSSI which lies immediately to the north-east of the River Stort. There is no evidence before me that the works proposed to construct a bridge over the drain or other works associated with the proposed diversion will have any adverse impact upon the SSSI or the reasons for which it has been so designated.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.42.26 The proposed footpath on the western side of the railway would run within Network Rail land; there would be no impact upon agricultural land to the west of the railway. On the east of the railway, the proposed route would run in the field margin to minimise any impact upon the agricultural productivity of the fields to the south of Mr Edmonston's property. There do not appear to be any adverse impacts that could not be addressed by detailed design or compensation.
- 5.42.27 The construction of a 1.8m high fence on either side of the railway to prevent future trespass is likely to introduce an urbanising element into a predominantly rural landscape. However, such fencing will be required to prevent access onto the railway from the west as the proposed footpath will run parallel to it. The impact on the local landscape can be mitigated through design and choice of materials.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.42.28 The residents of Oram Court have raised concerns about noise disturbance generated by train horns as trains pass the whistle board on the down line. The closure of the crossing will lead to the removal of the whistle board and the cessation of train horn noise.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.42.29 The proposed route would increase the journey distance between the western side of the railway and the River Stort by approximately 170m. If the object of taking a walk along FP 3 is to then travel either north or south along the river or to continue east towards Hallingbury Mill, the increase in journey time and distance is unlikely to represent an inconvenience to most users, given that the predominant use of the footpath appears to be for leisure purposes. The diversion proposed by Mr Edmonston would increase the journey distance by approximately 215m in total; this is not a distance which is likely to inconvenience many recreational users.
- 5.42.30 There would be little improvement in accessibility arising from the proposals. The approach to the crossing is currently over uneven arable land on the west of the railway, and uneven rising ground to the east. Stiles at the railway boundary place further limitations on the current access. The proposed route would run over similar terrain as an unmade grass footpath. Although the diversion would remove the stiles at the railway boundary, the proposed route would cross field boundaries at three locations whereas Mr Edmonston's suggested alternative would require two field boundaries to be crossed. It is likely that there would have to be some path furniture installed for stock control purposes.
- 5.42.31 I had the opportunity to view the proposed footpath in February 2019 following the close of the inquiry. Contrary to Mr Edmonston's submission about ground conditions likely to be encountered at that time of year, the field was dry and passable in ordinary walking boots. Mr Edmonston's suggested alternative to the north and east of Grove Cottage is on more elevated ground and was similarly dry underfoot.
- 5.42.32 Both suggested routes would maintain east-west access over the railway via the overbridge to the south of the current crossing and maintain the link to the rights of way network at the river in the same way that FP 3 currently does. Neither of the suggested routes would diminish accessibility nor would either increase the accessibility of FP 3. The suggested route to the north and east of Grove Cottage would require the user to walk approximately 40m longer than would be the case on Network Rail's proposed route. In the context of the purpose and characteristics of FP 3, this marginal increase is unlikely to inconvenience users. Any inconvenience which may arise may be compensated by the more extensive views over the surrounding countryside available from a more elevated position of Mr Edmonston's suggested alternative route.
- 5.42.33 From the overbridge, the proposed route runs in a generally south-easterly direction which Network Rail consider the desired direction of travel. Although Mr Edmonston's alternative was counter-intuitive in comparison, neither the Highway Authority nor the local representative of the Ramblers expressed any concerns in this regard.

- 5.42.34 The Secretary of State may consider that as the route proposed by Network Rail would be a suitable and convenient alternative for those currently using the crossing, he should conclude that it should be included in the Order. However, the alternative proposed by Mr Edmonston would also provide a suitable and convenient alternative for current users of H04. In my view, Mr Edmonston's proposed route has the advantage of returning the user to the higher ground to the north of Grove Cottage on the route which is currently used by the public and which remains clear of flood zones 2 and 3. I consider that the Secretary of State should include Mr Edmonston's alternative as the replacement for H04.
- 5.42.35 The Equality and Diversity Overview report rating for H04 was green and no DIA was carried out. The increased distance a user would have to travel from the western side of H04 to reach the junction of footpaths on the eastern bank of the river might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary, and the isolated, rural location of the crossing, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Overall conclusion**

- 5.42.36 Having regard to the above and to all other matters raised in relation to H04, I conclude that the Secretary of State should include H04 within the Order as the alternative proposal put forward by Mr Edmonston would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.
- 5.42.37 However, to bring into effect the proposed diversion, the filled-up Order dated 23 February 2019 will require modification in the manner set out in NR 190 and by substituting Sheet 08 with Replacement Sheet 08 (revision date 07-09-2018)<sup>287</sup>.

---

<sup>287</sup> OBJ 128 inquiry document 1

5.43 **H05 Pattens, H06 Gilston and H09 Fowlers**

**Description of the crossings**

- 5.43.1 These three crossings have been considered together as the proposed alternative for all three crossings comprises the use of an existing underpass in the vicinity of the crossings. All three crossings are located on the Liverpool Street to Ely railway between Spellbrook and Bishop's Stortford. All three crossings are located on a 550m section of the railway. The railway at this location comprises two lines of rails and carries passenger and freight trains at line speeds of up to 80mph.
- 5.43.2 To the north of the crossings is the town of Bishop's Stortford, to the south the village of Spellbrook, to the west is predominantly arable agricultural land and to the east lies the Thorley Flood Pound SSSI and Thorley Wash Local Nature Reserve.
- 5.43.3 **H05 Pattens** is crossed by Thorley FP 22 and provides a link between the A1184 approximately 100m to the west and the public rights of way network through the nature reserve and to the east of the River Stort. The western boundary of the nature reserve runs along the railway line. There are a small number of residential properties along the A1184 near the crossing, the nearest of which is approximately 100m to the south west and 140m to the west.
- 5.43.4 The crossing is approached on both sides along unmade cross field paths and there are stiles in the railway boundary fences. Accessibility of the crossing for those with limited mobility is poor. H05 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The ALCRM score for this crossing is C4. A 9-day camera census undertaken in July 2016 showed 109 pedestrians and 5 cyclists using the crossing, the busiest day being 17 July when 26 pedestrians used the crossing. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.
- 5.43.5 **H06 Gilston** is crossed by Thorley FP 7 and provides a link between Thorley Street which is approximately 100m to the west of the crossing and the rights of way network which runs into and through the nature reserve to connect to FP 5 and a bridge over the river. Thorley Flood Pound SSSI is located approximately 150m south of the crossing and the River Stort is approximately 220m to the east. The crossing is located within an area of flood zone 2. There are a small number of residential and commercial properties along Thorley Street, the nearest of which is approximately 50m west of the crossing. The wider surrounding area is largely agricultural.
- 5.43.6 The crossing is approached on both sides along unmade cross field paths and there are stiles in the railway boundary fences. Accessibility of the crossing for those with limited mobility is poor. H06 is a passive level crossing requiring users to stop, look and listen for approaching trains before crossing the rails. The ALCRM score for this crossing is C5. A 9-day camera census undertaken in July 2016 showed 51 pedestrians using the



crossing, the busiest day being 16 July when 19 pedestrians used the crossing. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

- 5.43.7 **H09 Fowlers** is a private vehicular crossing providing access to a parcel of land between the railway and the River Stort. The crossing is located approximately 100m east of Thorley Street. There are a small number of residential and commercial properties along Thorley Street, the nearest of which is approximately 20m south west of the crossing. The wider surrounding area is largely agricultural. Thorley Flood Pound SSSI is located approximately 80m south east of the crossing and the River Stort is approximately 250m to the east. The approach to the crossing is through fields. The crossing itself is flat and appears relatively accessible. There is a gate on one side of the crossing.
- 5.43.8 H09 Fowlers is a 'protected' crossing for vehicular users, in that users can telephone the signaller for permission to cross with a vehicle. The crossing is deemed to be 'passive' for any private pedestrian use in that they would be expected to stop, look and listen for approaching trains. A pedestrian could telephone the signaller if they considered it necessary to do so, i.e. in adverse weather conditions. The crossing has an ALCRM score of B8. Sightlines in all directions are sufficient to meet industry standards. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposals**

- 5.43.9 It is proposed to close H05 to all users and extinguish the PROW over the crossing and that part of FP 22 between the railway and the drain immediately to the east and that part of FP 22 on the western side of the railway between the new footpath to be created and the crossing.
- 5.43.10 Current users of FP 22 wishing to cross the railway from the west to reach the nature reserve and the river would be diverted northward along a new 2m wide unsurfaced footpath approximately 300m in length which would then turn east towards an existing underpass. Works would be undertaken to create a footpath within the underpass. The path would emerge from the underpass and run north for approximately 150m before turning east then south to run on the top of a drain embankment through the nature reserve to connect to the residual length of FP 22. The proposed route would add approximately 1Km to a journey from the A1184 to the residual length of FP 22.
- 5.43.11 The existing crossing infrastructure at H05 would be removed and a 1.8m chain link fence erected at the crossing point to prevent trespass onto the railway.
- 5.43.12 It is proposed to close H06 to all users and extinguish the PROW over the crossing and that part of footpath 7 between Thorley Road and the crossing.
- 5.43.13 Current users of FP 7 wishing to cross the railway from the west will be directed along the footway of Thorley Road to a new 2m wide footpath

which will run to the underpass. From then underpass users will then follow a new 2m wide footpath for approximately 250m to reach the residual section of FP 22.

- 5.43.14 The diversion would add 820m to a journey. Those users of FP 7 who wish to access the River Stort would be directed north along Thorley Street to FP 5 and the footbridge which carries FP 5 over the railway; this route would add approximately 40m to a journey to the river.
- 5.43.15 The existing crossing infrastructure at H06 would be removed and a 1.8m chain link fence erected at the crossing point to prevent trespass onto the railway.
- 5.43.16 It is proposed to close H09 to all private rights over the crossing. It is not proposed to create a private vehicular diversion. Pedestrians wishing to cross the railway at H09 would be directed to Thorley Street and the new footpaths being created as part of the closure of H05 and H06. Private vehicular access for smaller vehicles would be available through the underpass.
- 5.43.17 The existing crossing infrastructure at H09 would be removed and a 1.8m chain link fence erected at the crossing point to prevent trespass onto the railway.

#### **The Case for Network Rail**

- 5.43.18 NR's proposals involve diverting the users of H05 and H06 to an existing underpass under the railway, with the creation of new sections of footpath to the west and east of the railway, and granting a private right of way through the underpass to Mr Carpenter for the benefit of that part of his landholding which currently enjoys the benefit of a private right of way over H09 Fowlers.
- 5.43.19 In his objection, Mr Carpenter expressed concerns about headroom through the underpass. Mr Kenning confirmed that there is some restriction on headroom at H09, due to overhead power lines that need to be protected. Mr Kenning also confirmed that whilst concerns had been raised regarding restricted height in the underpass, nothing had been put forward to NR to suggest that a specific height was required in order to continue with the enjoyment and maintenance of that parcel of land. It was Mr Kenning's evidence that the headroom at the underpass would be sufficient to permit the passage of machinery (such as a ride on lawnmower) required for the cutting of grass on the parcel of land on the western side of the railway.
- 5.43.20 The Ramblers also raised concerns about the height of the underpass, and conditions underfoot, both through the underpass and on the proposed new PROW to the east of the railway.

- 5.43.21 In respect of the underpass, Ms Tilbrook highlighted the details set out in the Design Guide<sup>288</sup>, including the proposal to install a 3mm mesh to avoid anything interfacing with a train passing over head. Even allowing for the inclusion of the mesh, and the need to carry out some raising of ground levels through the underpass (to ensure appropriate water shed), she was confident that headroom of 1.9m through the underpass could be achieved.
- 5.43.22 Although concerns had been expressed about the new footpaths passing through the flood zone, the existing footpaths passed through the same terrain. This situation would therefore be familiar to existing users of the footpaths. In Mr Glass's oral evidence regarding flooding, it appeared that concerns centred on 'perception' and whether people would be prepared to walk through to the new PROWs if it was "quite boggy and wet". Whilst NR acknowledges that perception, and personal choice, are of course aspects of whether an individual may choose to use a particular route, it is submitted that the concerns raised in that respect here do not provide a proper basis for concluding that the proposed diversion routes would not provide suitable and convenient replacements, for the purposes of s.5(6) of the 1992 Act.
- 5.43.23 Ms Tilbrook also confirmed that she did not see any cause for concern in the underpass being used both by pedestrians and also by agricultural vehicles, noting that such usage was anticipated to be low given the limited use of H09 shown by user surveys.
- 5.43.24 It is considered that the crossings at H05 and H06 lie within a network of public rights of way which allow journeys of some distance to be undertaken. It is possible to travel to Thorley Houses (3Km distant), Bishop's Stortford (3.6Km distant), Bury Green (4.5Km distant) and Tye Green (3.7Km distant) as part of a walk using the crossings. The proposed diversions maintain the east-west connectivity over the railway and the connectivity to these longer recreational routes.
- 5.43.25 Concerns raised by others regarding the surface of the proposed footpaths, the condition and suitability of the bridge over Thorley Marsh Ditch are matters which can be considered at detailed design. The proposed new routes will be required to be brought into a condition which is considered satisfactory by the Highway Authority. The Highway Authority has not raised any concerns with regard to the available headroom at the underpass.
- 5.43.26 There is a clear disagreement between the Ramblers and NR as to the convenience and directness of the alternative routes, having regard to the increase in journey times and distances, however, for the reasons given its evidence, Network Rail maintains that the proposed diversion routes are suitable and convenient, when considered in the context of the purpose and characteristics of the existing use.
- 5.43.27 Herts & Middlesex Wildlife Trust have raised a number of concerns in correspondence. These relate both to the creation of the new PROW on the

---

<sup>288</sup> NR12 pages 44 and 45

Trust's land, comprising part of Thorley Wash SSSI, and as to the potential implications of the extinguishment of private rights over H09 for the purpose of accessing the SSSI. NR has responded to those concerns in correspondence with the Trust<sup>289</sup>.

5.43.28 In short Network Rail's response to the matters raised by the Trust is:

- (i) The Wildlife Trust does not enjoy the benefit of any legal rights over H09 to access its landholding. The closure of H09 does not, therefore, affect any legal rights held by the Trust;
- (ii) Although Mr Carpenter enjoys a legal right of way over H09 for the benefit of his own land, he does not have the power to extend that right to other parties for the benefit of their own land;
- (iii) Network Rail is aware of a 'pinch point' within the Trust's landholding which can be problematic in terms of accessing the northern part of the Trust's site during times of flood. That is capable of remedy within the Trust's own landholding. Nothing that Network Rail is proposing through this Order affects the Trust's ability to address that existing problem within their estate;
- (iv) The benefit of the right of way over H09 does not extend to that part of Mr Carpenter's landholding which is within the SSSI (i.e. that part to the south of the underpass);
- (v) Network Rail would, however, be prepared to include that parcel of Mr Carpenter's land within the wider landholding which would be benefited by the grant of a replacement right of access through the underpass;
- (vi) Network Rail has (conditionally) offered to make a payment of £5,000 to the Trust by way of compensation towards the cost of future ditch works, which may be required as a result of the Order proposals. Network Rail highlights that this reflects the fact that the Trust, as landowner, would be entitled to seek compensation for creation of the new PROW and any losses resulting from temporary use of the land under the provisions of the Order;
- (vii) Network Rail has assessed the potential impacts of the Order proposals on the SSSI and concluded that the Order proposals would not give rise to any likely significant effects<sup>290</sup>. Following consultation with statutory bodies – including Natural England – the Secretary of State issued a screening direction confirming that a full EIA was not required. There need be no cause for concern, therefore, that the Order proposals could potentially impact, adversely, on the SSSI.

---

<sup>289</sup> NR156 letter dated 13 December 2018 and NR 189 tab 137

<sup>290</sup> NR155 EIA screening report

- 5.43.29 Network Rail maintains, therefore, that the Order may properly be confirmed without modification.

**The Case for the Objectors who did not appear at the inquiry**

**Bishop's Stortford & District Footpaths Association (OBJ 124)**

- 5.43.30 The area is a popular route to the nature reserve at Thorley Wash and H05 is the most direct route from Thorley. The proposed alternative is over 1Km long and is routed through a designated flood plain in an area known to flood. The underpass is likely to require excavation to give the required headroom leaving it more prone to flooding. If the new paths were flooded a diversion north or south along Thorley footpath 5 or Spellbrook Lane East would be unacceptable at 2km in length.

**Herts & Middlesex Wildlife Trust (HMWT) (OBJ 137)**

- 5.43.31 H09 has served as an emergency access for the Trust as it is the only safe and practical point of access to the site in times of flood for the removal of grazing livestock. The crossing is also the only practical access for machinery engaged in ditch clearance as the main access point in the south is wet and boggy in the winter months.
- 5.43.32 HMWT remain concerned that the proposals will permanently cut off any physical vehicular access the landowner has to the SSSI compartment outside HMWT's ownership. They consider this to be an unacceptable act that will result in the loss of a compartment of Thorley Flood Pound SSSI. The permanent removal of the physical access point to the SSSI without a suitable replacement being proposed will not allow the landowner to be able to adequately manage that part of the SSSI in his ownership.
- 5.43.33 The proposed footpaths would go through the property which is a site sensitive to disturbance. The proposed footpath is routed alongside Thorley Marsh Ditch which is an important site for water vole. The ditch top currently carries a permissive path which is subject to very low use. Increased foot traffic along a PROW has potential impacts upon populations of water vole. Increased footfall is likely to require increased maintenance of the path surface.
- 5.43.34 Although part of the bridge over Thorley Marsh Ditch is located on Trust land, ownership of the bridge is unclear. No guarantees can be given that it is suitable for public use.

**Mr & Mrs Carpenter (OBJ 162)**

- 5.43.35 Footpath 22 can be conveniently routed along the footway of the A1184 and Thorley Road; the creation of a new cross-field footpath parallel to the railway is unnecessary, unjustified and unreasonable.
- 5.43.36 The landowners use Fowlers crossing by foot and vehicle to access 18.41 acres of land on the east of the railway. The extinguishment of the crossing will sever this land from the remaining land. The proposed redirection of

traffic to the underpass is not a suitable alternative for vehicle traffic since the underpass has restricted headroom.

- 5.43.37 No provision appears to have been made for the renewal or replacement of the bridge over Thorley Marsh Ditch to make it fit for use as a PROW or for its ongoing future maintenance.

**Rob Cann (OBJ 192)**

- 5.43.38 Mr Cann uses H05 regularly as part of a walk between Thorley Church to Thorley Wash and the towpath along the river Stort. The notices erected on site at H05 were unclear as to what was proposed if the crossing was closed. The crossing is a convenient link between Thorley Church, the SSSI at Thorley Wash and the towpath along the River Stort. Objection is also made to the proposal to close parts of FP 22. The site notices posted by Network Rail are difficult to read and understand.
- 5.43.39 The population of Bishop's Stortford is increasing and the use of sustainable modes of transport should be encouraged. Forcing pedestrians to divert along busy main roads should be contrary to planning policy as it increases danger. Although the occasional accident at a railway crossing should be avoided wherever possible, forcing pedestrians onto busy roads where the danger is even greater is not the answer.

**The Case for the Objector who appeared at the inquiry**

**The Ramblers (OBJ 148)<sup>291</sup>**

- 5.43.40 Footpath 22 which crosses H05 is a direct, short, convenient and open route linking Bridleway 10 to the path network to the east of the River Stort. The crossing is on elevated ground and affords a clear line of sight to the east and west; users can determine whether flooding in the area is preventing accessibility on the path ahead of them. By contrast, due to the proposed diversion's convoluted nature, users cannot easily see how the route will develop in front of them. This will deter them from advancing along the route.
- 5.43.41 To cross the railway from BR10 currently involves a walk of around 100m; the proposed diversion is in the region of 1 kilometre over an indirect, circuitous and meandering path. The current direct route takes 1.5 minutes to walk, whilst the proposed 1 km diversion takes 15 minutes.
- 5.43.42 If flooding or high rain fall resulted in the proposed route through the flood zone area being impassable, users will have to travel an extra 2.3Km to gain access to the Essex footpaths to the east of the river. This would involve more than 900m along major roads to reach the stepped footbridge which carries FP 5. At normal walking speed this will take almost 35 minutes.

---

<sup>291</sup> OBJ 148 W-003 Mr Glass

- 5.43.43 The proposed diversion route for H05 is not suitable due to its added length and convoluted nature, combined with the serious risk of flooding along the route and in and around the underpass. There are also concerns that the height of the underpass will be restricted if/when the existing drainage problems are dealt with.
- 5.43.44 It was put to Mr Glass, during cross-examination, that Network Rail had considered the risk of flooding – including for each individual crossing proposal – through the work underlying its environmental impact assessment screening request.
- 5.43.45 Of course, this assessment of flood risks is entirely irrelevant for purposes of Mr Glass' evidence and the Ramblers' objection to this crossing. The EIA screening assessment considers whether the proposed development will have "likely significant effects" on the environment. Mr Glass is not concerned about "significant" flood effects from the closure of H05. His concerns are about existing flood risks in the area of the proposed diversion and how this affects that diversion's suitability for walkers.
- 5.43.46 What is more, the Ramblers remain uncertain as to what changes Network Rail will make to the underpass, in order to address the drainage issues. The diagram on p. 45 of the design guide (NR12) is far from clear (particularly on the thickness of the mesh) and, in any event, is illustrative only.
- 5.43.47 Details are required here because the extent of these changes will affect the height of the underpass and, put bluntly, that will affect how many people will need to duck to use this route. Mr Kenning considered the resulting height to be 6'4", but Ms Tilbrook seemed to conclude 6'2". Mr Glass produced his own calculations<sup>292</sup> based on his estimates of the work involved and the path depth – noting that without further details he had to make assumptions.
- 5.43.48 Mr Glass estimated that the resulting headroom would only be 1.775m (5'10") – 1.825m (6") – which in his view would not be suitable nor convenient. Mr Glass also noted that when trains travel over the underpass the track appeared to flex vertically, leading him to question further how exactly the mesh would be fixed to the underpass and whether it could fracture over time.
- 5.43.49 It remains entirely unclear, whether a solution could be found at detailed design stage that would satisfy Hertfordshire County Council and which would then permit the crossing to be closed.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, tenants, local businesses, the public, utility providers and statutory undertakers,**

---

<sup>292</sup> OBJ 148 inquiry document 8

**including any adverse impact on their ability to carry on their business or undertaking or access their properties**

- 5.43.50 The main impact of the closure of H09 would be upon Mr Carpenter's ability to access 18 acres of his land on the eastern side of the railway. Mr Carpenter objects to the closure of H09 on the basis that the underpass through which he would be granted a private vehicular right has restricted headroom which would make vehicular access difficult. Network Rail contends that there would be sufficient headroom for a ride on lawn mower to pass through the underpass.
- 5.43.51 Although Network Rail asserted that Mr Carpenter's machinery would fit through the underpass, no detail was provided as to the type and size of the machinery in use as part of Mr Carpenter's land management operations to substantiate that assertion or to justify why Mr Kenning thought Mr Carpenter could manage the 18 acres of land to the west of the railway with a ride on lawnmower. Consequently, a decision as to whether Mr Carpenter would be able to manage his land as he does currently if H09 was closed cannot be arrived at with any degree of confidence. In such circumstances, the alternative being proposed for the closure of H09 cannot be considered a suitable and convenient replacement for the current crossing.
- 5.43.52 In relation to the proposed closure of H05 and H06, the owners and occupiers would find their land burdened by public rights of way to a greater extent than it currently is, an increased burden which is not offset by the proposed extinguishment of parts of FPs 22 and 7. The HMWT also has concerns regarding increased footfall on the reserve, and both landowners have concerns about the suitability of the bridge over Thorley Marsh Ditch for use as a PROW.
- 5.43.53 Matters such as the nature of the surface of the path through the nature reserve and the undertaking of any necessary renovation or repair of the bridge will be matters for discussion between Network Rail, landowners and the Highway Authority as the proposed path would have to be brought into a satisfactory condition before the crossings can be closed. There do not appear to be impacts in this respect which could not be addressed through detailed design or by the provisions as to compensation.

**SOM4(b) Impacts on other users**

- 5.43.54 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.43.55 It is unlikely that the diversion of parts of FPs 22 and 7 would have any impact upon flood risk in the area. The impact of the proposal upon flood risk was not the matter which concerned the Ramblers, but the likelihood of the new paths being flooded in current circumstances was a concern. The



current route of FP 22 crosses a flood zone 2 area on the eastern side of the railway which then becomes a flood zone 3 area between the Thorley Marsh Ditch and the river. Footpath 7 does not appear to cross land identified as prone to flooding.

- 5.43.56 The proposed alternative for FP 22 on the east side of the railway would also run partly through a flood zone 2 area before reaching the underpass where the path would briefly cross a flood zone 3 area. The proposed path on the western side of the railway would run over flood zone 2 land. In terms of the predicted propensity for the footpath to be in flood, the proposed route would run over land with similar characteristics as those currently experienced by users of the current footpaths; users of FP 22 would not be diverted onto land with any greater risk of flooding than is already experienced.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.43.57 The proposed footpaths would run through the Thorley Flood Pound SSSI to a greater extent than is currently the case. Whilst there will be some works required as part of the diversion of the footpath, the EIA screening report concludes that impact upon the SSSI is likely to be minimal and identifies constraints and mitigation which may be required. The proposed routes would follow paths and tracks which currently exist on the ground and are managed for pedestrian access; however, the increased footfall is likely to have a potentially negative impact on populations of water vole through greater disturbance.
- 5.43.58 HMWT submits that the closure of H09 would impact upon the management of the SSSI as the crossing provides a means by which its grazing cattle can be removed from the reserve in times of flood. However, HMWT does not benefit from a private right over the railway at this point and would have to make alternative arrangements for the management of the site if the crossing were to be closed.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.43.59 The land crossed by the proposed footpaths is not agricultural or forestry land.
- 5.43.60 The construction of a 1.8m high fence on either side of the railway to prevent future trespass is likely to introduce an urbanising element into a predominantly rural landscape. However, such fencing will be required to prevent access onto the railway from the west as the proposed footpath will run parallel to it. The impact on the local landscape can be mitigated through design and choice of materials.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.43.61 No representations were made with regard to this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.43.62 Those users wishing to travel along FP 7 and H06 from the west to reach the river will be required to walk along the footway of Thorley Road and cross the railway via footpath 5 and the stepped footbridge. This would increase the journey distance by approximately 40m.
- 5.43.63 Those travelling east along FP 7 would be required to divert south then east to the footway of Thorley Road via the underpass. Although circuitous, to travel to FP 1 via the underpass to continue west would add only 400m of distance to such a journey. This is unlikely to inconvenience users of the current footpath.
- 5.43.64 The main issues arising from the proposed diversion of FP 22 and the closure of H05 related to the length of the diversion, the likelihood of flooding and the impact of flooding on user behaviour and the headroom at the underpass.
- 5.43.65 In relation to the headroom at the underpass, Network Rail submitted that clearance of 1.90m was achievable with protective mesh installed on the underside of the bridge. This contrasted with Mr Glass' estimates. It was accepted that some users would have to stoop to pass through the underpass, but Network Rail did not consider that vertical deflection was a problem at the site.
- 5.43.66 The measurements I took during my site visit showed that the clearance at each end of the bridge varied between 1.90m and 1.95m with 5mm deflection when a train passed overhead. The eventual available clearance would depend upon the nature and position of any protective mesh installed and the extent (if any) of works to the floor of the underpass and to the side drain carrying water through it. These will be matters to be determined at the detailed design stage, and approval will be required from the highway authority prior to the crossings being closed.
- 5.43.67 The underpass is not particularly long, and a reasonable user is likely to be able to pass through within a matter of seconds, even if having to stoop slightly for that short period. Although headroom is likely to be restricted following the installation of measures to protect the railway and users, the limited period of time which a user will be required to be in the underpass would not represent a significant inconvenience.
- 5.43.68 The underpass sits on the boundary between flood zones 2 and 3 and is likely to be in flood at some point. In this respect the proposed route through the underpass would be no different from the existing route of FP 22 which passes through the same flood zones. Although parts of FP 22 are elevated, particularly at H05, and would permit a view of onward conditions to the west of the railway, users are likely to be aware of potential for flooding of onward routes from the nature and location of the path. Periodic flooding of the existing footpaths already occurs, and the proposed route

would be no more inconvenient or unsuitable in this respect than the existing paths.

- 5.43.69 The proposed diversion of FP 22 would require path users to travel north running parallel to the railway then east through the underpass, north again parallel to the railway, then south-east to cross the ditch and then south alongside the ditch to re-join FP 22.
- 5.43.70 This somewhat circuitous route would increase the journey distance for those wishing to cross the railway at H05 by approximately 1Km. Although FP 22 forms part of a much wider public rights of way network over which it is possible to undertake a number of long-distance journeys between settlements, FP 22 and H05 provide a convenient east-west link in those journeys. For those undertaking a longer walk in the countryside, an additional kilometre of walking may not be an inconvenience, but for those undertaking a walk involving BR 10, FP 22 and the path along the riverbank, the circuitous and counter-intuitive nature of that additional journey would be inconvenient, despite retaining an east-west means of crossing the railway.
- 5.43.71 The Equality and Diversity Overview report rating for all three crossings was green and no DIA was carried out. The increase in travel distance for users of H06 would be unlikely to be felt disproportionately; everyone seeking to use the crossing would be affected in the same manner. Similarly, all users of H05 would be affected in the same manner and would be similarly inconvenienced by the circuitous, lengthy and counter-intuitive nature of the proposed alternative.

### **Overall conclusions**

- 5.43.72 Considering all the above, and all other matters raised in relation to these crossings, I conclude that the Secretary of State should include H06 within the Order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.
- 5.43.73 I also conclude that the Secretary of State should not include H05 or H09 in the Order as the proposed alternatives would not provide existing users of the crossings with a suitable and convenient alternative means of crossing the railway.

## 5.44 **H08 Johnsons**

### **Description of the Crossing**

- 5.44.1 Public footpath 60 Bishop's Stortford commences on the A1250 link road and runs in a north easterly the northerly direction parallel to the Liverpool Street to Ely railway crossing H08 and running generally easterly to Cannons Close, a residential street approximately 110m to the east of the crossing.
- 5.44.2 The crossing was located approximately 1Km north of Bishop's Stortford station. The land immediately surrounding the crossing is largely undeveloped, comprising undisturbed fields, open space and sports grounds. Adjacent to the crossing is a conservation area. The River Stort is located approximately 200m west of the crossing. Residential housing however dominates the wider area, the nearest of which are approximately 100m south east of the crossing.
- 5.44.3 Johnsons was a footpath level crossing with kissing gates and MSLs. The ALCRM score for the crossing when open was C2 but is currently M13. The railway comprises two lines of rails and carries passenger and freight trains with a line speed of up to 75mph. The crossing was informally closed in 2014 following the construction of a fully accessible ramped footbridge adjacent to the former crossing. As the crossing is currently unavailable for use, no census of use has been carried out as part of this project. There has been a history of misuse and near misses at this crossing.

### **Description of the Proposal**

- 5.44.4 It is proposed to close the crossing to all users to extinguish the PROW over it and over that part of FP 60 shown on the definitive map of public rights of way as running between the crossing and Cannons Close. The PROW over FP 60 would be diverted to a new alignment between Cannons Close and the footbridge and would continue over the footbridge.
- 5.44.5 Users of FP 60 wishing to cross the railway would be diverted over the accessible footbridge which has been constructed adjacent to the crossing. The diversion would formalise the current position whereby the public make use of the existing way to the east of the level crossing and would extinguish the way shown on the definitive map.

### **The Case for Network Rail**

- 5.44.6 Johnsons footpath level crossing was informally closed in 2014 following the construction of an accessible footbridge at the site of the level crossing. The proposal would confer powers to divert the PROW over H08 to the new footbridge. Network Rail considers that the proposed route over the new footbridge is suitable and convenient when considered in the context of the purpose and characteristics of the existing footpath crossing.

## **Objections and Representations**

5.44.7 There were no objections or representations made to the proposal.

## **Inspector's Conclusions**

### **SOM4(a) The likely impacts on landowners, 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**

5.44.8 The proposal has no impact upon adjacent landowners, local businesses, utility providers and statutory undertakers and there would be no adverse impact upon those parties' undertakings. A fully accessible bridge has been constructed to carry pedestrians over the railway. Members of the public who may have wished to cross the railway at this point could do so via the ramped access or the steps of the bridge.

### **SOM4(b) Impacts on other users**

5.44.9 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

### **SOM4(c) Impact on flood risk**

5.44.10 There is no indication that the proposal would have any impact on flood risk.

### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.44.11 The crossing is not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.44.12 The land surrounding the crossing is not used for agriculture or forestry. The question of the impact the bridge would have upon the landscape will have been considered prior to the grant of planning permission for its construction.

### **SOM4(g) Any other environmental impacts including noise and health**

5.44.13 No representations were made regarding this matter.

### **SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.44.14 The pedestrian crossing at Johnsons was informally closed in 2014. The bridge has been constructed with ramps at a gradient of not more than 1:20 to provide a means of crossing the railway which is accessible to all persons.
- 5.44.15 The DIA scoping assessment determined that the proposal fell outside of the red – amber – green rating as all disproportionate impacts resulting from the closure of Johnsons crossing had been mitigated by the installation of a fully accessible footbridge.
- 5.44.16 Taking all these matters into account, I consider that the proposed alternative route is a suitable and convenient alternative for those who would have used the crossing prior to its informal closure.

### **Overall Conclusions**

- 5.44.17 Considering all the above, and all other matters raised in relation to H08 Johnsons, I conclude that the Secretary of State should include H08 within the Order as the footbridge provides those who would have used H08 with a suitable and convenient alternative means of crossing the railway.

## 5.45 **HA1 Butts Lane**

### **Description of the crossing**

- 5.45.1 Footpath 170 commences on Burnway and runs in a generally northerly direction between houses to cross the Romford to Upminster branch railway at HA1 and then continues in a north-easterly direction between houses to Maybush Road. The railway at this point is located within the densely built-up area of Hornchurch.
- 5.45.2 HA1 is approached from the south over a sealed surface path which runs in an alleyway formed by the boundary fences of two adjacent residential properties. The crossing has stiles in the railway boundary fences and there is crossing decking furniture at the crossing itself to enable pedestrians to cross safely with anti-trespass boards either side of the crossing decking. On the western side of the railway, the path again runs between the boundary hedges and fences of residential properties.
- 5.45.3 HA1 has stiles in the railway boundary fence and is a passive level crossing, requiring users to stop, look and listen for approaching trains. The railway comprises a single set of rails and carries passenger traffic at line speeds of up to 30mph. The ALCRM score for this crossing is C4. A 9-day camera survey of use of the crossing undertaken in June and July 2015 recorded 247 pedestrians and 1 cyclist using the level crossing with the busiest day being Saturday 4 July 2015 when 37 pedestrians and 1 cyclist were recorded. Sightlines in both directions are sufficient to meet industry standards. In 2018 there were two reports of poor behaviour or misuse of the crossing, both involving groups of youths or children and there is a history of vandalism and youth congregating at the crossing.

### **Description of the proposal**

- 5.45.4 It is proposed to close HA1 to all users, extinguishing the PROW over the crossing and that part of FP 170 between Burnway and Maybush Road.
- 5.45.5 Current users of HA1 wishing to cross the railway would be diverted along the existing footway on Burnway to the overbridge which carries FP 171 over the railway. Users wishing to access Maybush Road would then continue along the footway of Woodall Crescent to connect with the residual part of FP 170 on Maybush Road. The proposed alternative would increase journey distances by approximately 750m.
- 5.45.6 Footpath 170 would be extinguished between Burnway and Maybush Road whilst retaining access to private properties. Two-metre high palisade fencing would be installed at the railway boundaries to prevent trespass and the crossing infrastructure would be removed. Gates would be erected across the ends of the path on Burnway and Maybush Road to secure the access to adjacent properties.

## **The Case for Network Rail**

- 5.45.7 Network Rail is unaware of any requests having been made by the train operating company for line speeds to be increased, but an increase in line speeds may be possible if the constraints imposed by crossings such as HA1 were removed.
- 5.45.8 A DIA scoping exercise recommended that full DIA was undertaken. The DIA concluded that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route is considered an appropriate solution. The concerns raised with regard to the maintenance of the overbridge will be discussed with the Highway Authority at the detailed design stage. The proposed alternative route is generally level but with a slight increase in gradient at the overbridge, but which is less than 1:20.
- 5.45.9 The alternative route retains the connectivity to both sides of the railway via the surfaced footways in the existing urban environment. The overbridge which carries FP 171 is an old road bridge that is now converted into a wide pedestrian way with deep grass verges and a tarmacked surfaced path running through the middle. The bridge also benefits from street lighting.
- 5.45.10 This crossing is described within Part 2 of Schedule 2 of the Order as no new highways are being created as part of the proposal. The proposed route is considered suitable and convenient when considered in the context of the purpose and characteristics of the existing route.
- 5.45.11 Contrary to what is suggested by Mr Atkins in his written objection, whilst this line forms part of the London Overground, it is Network Rail and not Transport for London (TfL) which owns, and is responsible for, the railway infrastructure on this line.

## **Objections and representations**

### **David Atkins (OBJ 176)<sup>293</sup>**

- 5.45.12 Many of the proposals involve walking along a road, often with no footpath. Network Rail seeks to transfer the low risk of an accident on a level crossing into a much higher risk of one on the public highways. Many of the diversion routes are long; no crossing diversion should be over 1Km and should ideally be less than 500m. On single track lines the time spent crossing the railway is very short and the volume of train traffic is much less than on multi track lines. An even stronger case needs to be made for the closure of crossings on single track lines.
- 5.45.13 The Romford – Upminster line is separate from the remainder of Network Rail's system as it is a TfL overland line; TfL should deal with any crossing issues.

---

<sup>293</sup> Mr Atkins did not appear at the inquiry



### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.45.14 The only landowners affected by this proposal appear to be Network Rail and the owners and occupiers of those properties on Burnway and Maybush Road which abut footpath 170. Access to property would not be diminished as a result of the proposal; it is highly likely that the adjacent property owners would experience less disturbance with the cessation of members of the public using the footpath to access the crossing.

#### **SOM4(b) Impacts on other users**

- 5.45.15 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.45.16 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.45.17 The crossing is immediately north west of Hornchurch Cutting SSSI with the crossing forming the northern boundary of the SSSI which is located on the southern embankment of the railway cutting. Natural England made no submissions regarding the proposal and the closure of the crossing is unlikely to have any impact upon the SSSI or the features for which it has been notified as the infrastructure of the crossing can be removed from the railway.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.45.18 Footpath 170 does not cross agricultural or forestry land; consequently, there would be no adverse impacts upon such land.
- 5.45.19 Other than the permanent removal of the infrastructure associated with the pedestrian crossing and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of HA1. The crossing is located in an urban setting; the palisade fencing proposed to prevent trespass will not have an adverse impact upon the urban landscape which surrounds the railway.

**SOM4(g) Any other environmental impacts including noise and health**

5.45.20 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.45.21 The available evidence suggests that HA1 serves a utilitarian function as an access between residential streets and is used by a moderate number of people.
- 5.45.22 What is proposed at this crossing is the extinguishment of the PROW over part of FP 170; the proposed alternative route runs over other land over which the public already have a right of way. The suggested alternative would utilise the footways of Burnway, Woodhall Crescent and Maybush Road, together with the former road bridge which carries FP 171. Pedestrians would therefore be separated from vehicular traffic at all times; the alternative can be considered to be safe for pedestrians.
- 5.45.23 The alternative would provide a means by which pedestrians could travel between Burnway and Maybush Road without having to cross the railway on the level with the journey distance increasing by approximately 750m. The intended destination of individual users will determine the degree of convenience or inconvenience experienced. If a user intends to travel to Woodhall Crescent or the streets to the north-east of it then there is likely to be little by way of inconvenience. Those approaching Maybush Road from the north intending to travel south-east from Burnway are similarly unlikely to find the diversion inconvenient in terms of journey times or distance. Those wishing to travel to streets to the south-west of Burnway would not be prevented from doing so.
- 5.45.24 The Equality and Diversity Overview Report for HA1 was red and a full DIA was carried out as it was considered that due to the highly urbanised location of the crossing, it was likely that it was frequently used by people with protected characteristics. The footways adjacent to Burnway, Woodhall Crescent and Maybush Road are by and large, level and at a gradient suitable for use by a wide group of people. Although the bridge carrying footpath 171 has a slight increase in incline compared with the surrounding streets, that incline has been assessed at less than 1:20 and should not prevent those with reduced mobility from accessing the bridge.
- 5.45.25 The increased distance a user would have to travel to cross the railway might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing and the stiles at the railway boundary, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.45.26 The physical characteristics of the alternative route are suitable for use by those who currently use HA01 and although users would be deprived of choice as a result of the closure of the crossing, current users would be not be prevented from undertaking a journey between Burnway and Maybush Road.

**Overall conclusion**

5.45.27 Considering all the above, and all other matters raised in relation to HA1 Butts Lane, I conclude that the Secretary of State should include HA1 within the Order as the footbridge provides existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 5.46 **HA2 Woodhall Crescent**

### **Description of the crossing**

- 5.46.1 Footpath 172 commences on Maywin Drive and runs in a generally north-north-easterly direction in alleyway between the boundary fences of houses to cross the Romford to Hornchurch railway line at HA2. The footpath then continues in a north-north-easterly direction between the boundary fences of houses terminating on Woodhall Crescent. The railway at this point is located within the densely built-up area of Hornchurch.
- 5.46.2 HA2 is approached from the south over a sealed surface path which runs in an alleyway formed by the boundary fences of two adjacent residential properties. The crossing has stiles in the railway boundary fences and ramped pathways to provide access into and out of the cutting through which the railway passes. There is crossing decking furniture at the crossing itself to enable pedestrians to cross safely with anti-trespass boards either side of the crossing decking. On the western side of the railway, the path again runs between the boundary hedges and fences of residential properties.
- 5.46.3 HA02 has stiles in the railway boundary fence and is a passive level crossing, requiring users to stop, look and listen for approaching trains. The railway comprises a single set of rails and carries passenger traffic at line speeds of up to 30mph. The ALCRM score for this crossing is C5. A 9-day camera survey of use of the crossing undertaken in July 2016 recorded 56 pedestrians and 9 cyclists using the level crossing with the busiest day being Friday 15 July 2015 when 15 pedestrians were recorded. Sightlines in both directions are sufficient to meet industry standards. There have been no incidents of misuse of the crossing although there is a history of vandalism and youths congregating at the crossing.

### **Description of the proposal**

- 5.46.4 It is proposed to close HA2 to all users, extinguishing the PROW over the crossing and FP 172 between Maywin Drive and Woodhall Crescent.
- 5.46.5 Current users of HA2 wishing to cross the railway would be diverted along the existing footway on Maywin Drive to the Wingletye Lane overbridge where a separate footbridge carries pedestrians over the railway. Users wishing to access Woodhall Crescent would then continue along the footway of Wingletye Lane to connect with Woodhall Crescent. The proposed alternative route would increase journey distances from one end of FP 172 to the other by approximately 460m.
- 5.46.6 Footpath 172 would be extinguished between Maywin Drive and Woodhall Crescent whilst retaining access to private properties. Two-metre high palisade fencing would be installed at the railway boundaries to prevent trespass and the crossing infrastructure would be removed. Gates would be erected across the ends of the path on Maywin Drive and Woodhall Crescent to secure the access to adjacent properties.

## **The Case for Network Rail**

- 5.46.7 HA2 is located in the London Borough of Havering on the Romford to Upminster branch line. As with HA1 whilst this line forms part of the London Overground, it is NR and not TfL which owns, and is responsible for, the railway infrastructure on this line.
- 5.46.8 A DIA scoping exercise recommended that full DIA was undertaken. The DIA concluded that due to the low level of usage of the crossing, accessibility issues with the existing route and the availability of a fully accessible alternative route by which the railway could be crossed, closure and redirection along the proposed diversion route was considered an appropriate solution. The concerns raised by the DIA with regard to the maintenance of the overbridge will be discussed with the Highway Authority at the detailed design stage. The approaches to the overbridge are consistent with the preferred gradient of 1:20.
- 5.46.9 As Ms Tilbrook identified in her evidence, users of the existing level crossing have the option to cross the railway either via the segregated footbridge at Wingletye Lane or to use the overbridge to the north-west which carries FP 171. The diversion route to the east was shown on the design freeze plan as this was the shorter route.
- 5.46.10 There was less recorded use of this crossing than at HA1 as the environment leading to the crossing was less inviting; use of the crossing appeared to be for access to nearby amenities. HA2 was not as popular a route with the suggested alternative via the Wingletye Lane footbridge being heavily used. The proposed alternative would not diminish access to St Andrews Park. This crossing is also within Part 2 of Schedule 2 of the Order as no new highways are being created as part of the proposal.
- 5.46.11 Network Rail maintains that the proposed diversion route, via existing highways, provides a suitable and convenient alternative for existing users and that the Order can properly be confirmed without modification.

## **Objections and Representations**

### **Natural England (REP 04)<sup>294</sup>**

- 5.46.12 The proposed closure of the crossing is not likely to significantly affect the interest features for which the site was notified

### **David Atkins (OBJ 176)<sup>295</sup>**

- 5.46.13 Many of the proposals involve walking along a road, often with no footpath. Network Rail seeks to transfer the low risk of an accident on a level crossing into a much higher risk of one on the public highways. Many of the diversion routes are long; no crossing diversion should be over 1Km and

---

<sup>294</sup> REP 04 was withdrawn by letter dated 10 October 2017

<sup>295</sup> Mr Atkins did not appear at the inquiry

should ideally be less than 500m. On single track lines the time spent crossing the railway is very short and the volume of train traffic is much less than on multi track lines. An even stronger case needs to be made for the closure of crossings on single track lines.

- 5.46.14 The Romford – Upminster line is separate from the remainder of Network Rail’s system as it is a Transport for London overland line; TfL should deal with any crossing issues.

#### **Inspector’s Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.46.15 The only landowners affected by this proposal appear to be Network Rail and the owners and occupiers of those properties on Maywin Drive and Woodhall Crescent which abut FP 172. Access to property would not be diminished as a result of the proposal; it is highly likely that the adjacent property owners would experience less disturbance with the cessation of members of the public using the footpath to access the crossing.

#### **SOM4(b) Impacts on other users**

- 5.46.16 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail’s level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.46.17 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.46.18 The railway cutting in the vicinity of HA2 comprises the Hornchurch Cutting SSSI. Natural England considers that the proposed closure of the footpath across the railway is not likely to significantly affect the geological features for which the SSSI was designated.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.46.19 Footpath 172 does not cross agricultural or forestry land; consequently, there would be no adverse impacts upon such land.
- 5.46.20 Other than the permanent removal of the infrastructure associated with the pedestrian crossing and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of HA2. The crossing is located in an urban setting; the palisade fencing

proposed to prevent trespass will not have an adverse impact upon the urban landscape which surrounds the railway.

**SOM4(g) Any other environmental impacts including noise and health**

5.46.21 No submissions were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.46.22 The available evidence suggests that HA2 serves a utilitarian function as an access between residential streets and is used by a limited number of people on a frequent basis. The suggested alternative would utilise the footways of Maywin Drive, Wingletye Lane and Woodhall Crescent, together with the Wingletye Lane footbridge. Pedestrians would therefore be separated from vehicular traffic at all times; the alternative can be considered to be safe for pedestrians.

5.46.23 The alternative would provide a means by which pedestrians could travel between Maywin Drive and Woodhall Crescent without having to cross the railway on the level with the journey distance increasing by approximately 430m. The intended destination of individual users will determine the degree of convenience or inconvenience experienced. If a user intends to travel to Woodhall Crescent or the streets to the north-east of it then there is likely to be little by way of inconvenience. Those approaching Woodhall Crescent from the north intending to travel south-east from Maywin Drive are similarly unlikely to find the diversion inconvenient in terms of journey times or distance. Those wishing to travel to or from St Andrews Park or the streets to the west of the park would not be prevented from doing so.

5.46.24 The Equality and Diversity Overview Report for HA1 was red and a full DIA was carried out as it was considered that due to the highly urbanised location of the crossing, it was likely that it was frequently used by people with protected characteristics. The footways adjacent to Maywin Drive, Wingletye Lane and Woodhall Crescent are by and large, level and at a gradient suitable for use by a wide group of people. Although the bridge carrying FP 172 has a slight increase in incline compared with the surrounding streets, that incline has been assessed at less than 1:20 and should not prevent those with reduced mobility from accessing the bridge.

5.46.25 The increased distance a user would have to travel to cross the railway might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing and the stiles at the railway boundary, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

5.46.26 The physical characteristics of the alternative route are suitable for use by those who currently use HA2 and although users would be deprived of

choice as a result of the closure of the crossing, they would be not be inconvenienced by that closure.

**Overall conclusion**

5.46.27 Considering all the above, and all other matters raised in relation to HA2, I conclude that the Secretary of State should include HA2 within the Order as the footbridge would provide existing users with a suitable and convenient alternative means of crossing the railway.



## 5.47 **HA3 Manor Farm and HA4 Eve's**

### **Description of the crossings**

- 5.47.1 Havering FP 251 is shown in the definitive map to cross the Upminster to Grays railway line approximately 120m west of the M25 motorway and approximately 190m south of Ockendon Road (B1421). Footpath 251 is currently a cul-de-sac at its western end which is located south-east of Manor Farm and is also a cul-de-sac at the motorway, as the footpath was severed by the construction of the M25. The land surrounding the crossing is predominantly arable land with limited residential development to the north-west and east of the railway.
- 5.47.2 There is no crossing infrastructure present at HA3 and no evidence of use of FP 251 between Pea Lane and the railway. The railway at this location comprises a single line of rails and carries passenger and freight trains at speeds of up to 70mph. Network Rail describe this crossing as a 'sleeping dog' in that it has not been accessible since the M25 was constructed; as such it has not been assessed under ALCRM, but would have a score of M13 if it were to be assessed.
- 5.47.3 Havering FP 252 crosses the same railway line via HA04 approximately 400m north-east of Dennis Road at little to the west of the M25 motorway. Footpath 252 commences on Dennis Road and runs in a generally north-easterly direction over arable agricultural land to connect with FPs 231 and 254 at a point east of Hall Farm and west of the church of St Mary Magdalene.
- 5.47.4 HA4 is approached from the south along an unsurfaced field edge path towards the railway. There are stiles in the railway boundary fences and crossing decking furniture at the crossing to enable pedestrians to cross safely. On the eastern side of the railway the footpath continues over arable land as a field-edge and cross-field unsurfaced path towards the church.
- 5.47.5 HA4 has stiles in the railway boundary and is a passive level crossing requiring users to stop, look and listen for the approach of trains before crossing the rails. The railway comprises a single line of rails and carries passenger and freight trains at speeds of up to 70mph. The ALCRM score for this crossing is C10. A 9-day camera survey conducted in July 2016 did not record any use of this crossing. Sightlines in all directions are sufficient to meet industry standard. There have been no reports of misuse or poor user behaviour at this crossing.

### **Description of the proposals**

- 5.47.6 It is proposed to formally close HA3 to regularise the current situation. The PROW over the crossing would be extinguished, together with that part of FP 251 between Pea Lane and the M25.
- 5.47.7 It is proposed to close HA4 to all users and to extinguish the PROW over it and over that part of FP 252 between Dennis Road and FP 251 approximately 360m east of the crossing.

- 5.47.8 Current users of HA4 wishing to cross the railway from Dennis Road would be diverted under the motorway overbridge to a new 2m wide unsurfaced field-edge path to Pea Lane. Users would then cross Pea Lane to a new 2m wide unsurfaced field-edge footpath running in a generally northerly direction to connect with that part of FP 251 south of Manor Farm. Users would then follow FP 251 to Pea Lane and cross the lane a second time to a new 2m wide field edge path to the Ockendon Road overbridge. A flight of steps would take the user to Ockendon Road crossing the railway via the overbridge. Once over the railway, users would then return to a new 2m wide unsurfaced field edge path running parallel to Ockendon Road via a flight of steps and to then emerge on the footway of Ockendon Road. Users would walk along Ockendon Road and would have the choice of turning north or south to walk the public footpaths parallel to the M25. Users who turn south would be able to walk towards St Mary Magdalene's church. The additional length of the diversion to return users to a point south-east of St Mary Magdalene's church would be approximately 1.64Km.
- 5.47.9 The infrastructure at the railway crossing would be removed with the railway boundary fence being made secure to prevent trespass. A pedestrian gate for the use of Network Rail would be installed in the boundary fence on the south-west side of the railway.

### **The Case for Network Rail**

- 5.47.10 The main issues raised by objectors at the inquiry focused on the use of Ockendon Road bridge, and, for Mr Mee the creation of new PROW on his land.
- 5.47.11 Following a scoping study, a DIA was not considered necessary for these crossings due to the HA3 being unavailable and due to the current restricted accessibility of the path leading to HA4. The public rights of way in the vicinity of HA4 are generally considered to be of east / west orientation. Any medium to long walk in the area using the existing public rights of way network requires some element of road walking. The proposed route maintains the east - west connectivity via a longer length of new PROW and the bridge on Ockendon Road.
- 5.47.12 Mr Kenning confirmed in evidence that although extinguishment of the PROW over the level crossings had been considered without provision of new footpaths, the potential issues arising from on-road walking along Pea Lane and Ockendon Road had led to the conclusion that new field-edge footpaths should be provided. New footpaths are proposed on both sides of the railway up to the Ockendon Road railway bridge structure to eliminate road walking as far as practicable. Network Rail would continue to engage with Mr Mee during detailed design (if the Order is confirmed) regarding the concerns he had expressed around trespass by motorbikes and fly-tipping.
- 5.47.13 In respect of Ockendon Road overbridge, Ms Tilbrook explained that the new field-edge footpaths had been introduced to the east and west of the bridge in response to the issues raised in the NR commissioned RSA, and to mitigate those concerns by reducing the length of road walking along

Ockendon Road. The RSA had identified that high volumes of traffic and limited visibility at the bridge may result in collisions between pedestrians and vehicles. Bringing pedestrians out onto the bridge closer to the parapet assisted in addressing the concerns with visibility over the bridge.

- 5.47.14 Users would have to walk approximately 30m of Ockendon Road over the bridge using the carriageway and narrow verges. Although there would be a short section of around 7m on either side where visibility was more limited due to the humpback nature of the bridge, this would improve as users approached the crest. Ms Tilbrook's evidence was that whilst the available visibility did not meet the design standards in DMRB within that short section of more limited visibility, the stopping sight distances set out in the Highway Code could be achieved.
- 5.47.15 ATC data was gathered on Ockendon Road at a point east of the road bridge. The posted speed limit at this point is 40mph; the ATC data showed that the 85<sup>th</sup> percentile speed of westbound traffic was 45.7mph. The RSAs undertaken for both HA3 and HA4 identified that the narrow width of Ockendon Road bridge and the high speed of vehicles may result in collisions between pedestrians and vehicles. The RSA's recommended that a footway should be provided at the bridge<sup>296</sup>.
- 5.47.16 It was acknowledged that careful consideration would need to be given in detailed design to the 'landing' where pedestrians were brought out onto the bridge; any such proposals would need to be approved and certified by the highway authority, and those proposals would be subject to a Stage 2 RSA. If appropriate, warning signs could also be introduced, to alert drivers to the potential presence of pedestrians on the bridge.
- 5.47.17 Mr Russell disagreed – although he confirmed in cross-examination that his appraisal of the bridge had not been based on his having walked over to or stood at the parapet location. He acknowledged that the crest of a hill can have a greater impact on visibility, the further away you stand from it.
- 5.47.18 Network Rail has set out in its evidence why it considers that a suitable and convenient replacement can be provided at this location, having regard to its context and the purpose for which the crossings are (or would be) used today. It acknowledges, however, that the Inspector's recommendations on this crossing will no doubt be informed by observations from site. NR would merely highlight, in this regard, that the situation on the ground today is not as proposed under the Order and ask that this is borne in mind.
- 5.47.19 Network Rail maintains that the Order may properly be confirmed without modification.

## **The Case for the Objectors**

### **Stuart Mee (OBJ 013)**

---

<sup>296</sup> NR16 report 367516/RPT017 revision B November 2016 pages 3-4

- 5.47.20 The proposals are unnecessary, flawed and will prove to be considerably more dangerous to the public using them than the existing crossing. The footpath crosses a single-track line with excellent sightlines and has negligible safety issues for pedestrians. The suggested route poses multiple safety hazards for walkers.
- 5.47.21 The bridge on Ockendon Road is humpbacked and is extremely narrow at the crown of the bridge. There is no place of refuge on the bridge for pedestrians and access onto the bridge from the field would result in a serious incident occurring. The proposed crossing of Pea Lane would also be dangerous for pedestrians due to the double-blind bend and permitted road speed of 60mph.
- 5.47.22 Security of the farm would be compromised by the new footpath being created from the south. Footpath 251 is shown as a cul-de-sac as it originally commenced at the farm cottages to provide occupants of those houses a means of access to St Mary Magdalene's church.
- 5.47.23 The proposed Lower Thames Crossing would impact on both the current and proposed route and HA4 would provide the best route for pedestrians in the long term due to the impact the new road scheme would have upon Ockendon Road between the M25 and the railway bridge.

**Ramblers (OBJ 148)<sup>297</sup>**

- 5.47.24 The proposals to close HA3 and HA4 both rely on a diversion that routes users over the Ockendon Road bridge. This bridge is not safe for pedestrian use. Ockendon Road is a fast-moving, highly trafficked road. The bridge is clearly narrow and hump-backed meaning that visibility for vehicles is severely restricted.
- 5.47.25 Network Rail's proposals provide no details, on the design freezes or in the design guide description<sup>298</sup>, as to how users will cross this bridge. It only became apparent during the inquiry itself that Network Rail intended to install steps to surmount the embankments between the proposed new field-edge footpaths (on the approaches to the bridge) and the bridge itself, and that it planned to position these steps so that users would be "brought out onto" the bridge at some point along its crest.
- 5.47.26 Ms Tilbrook explained, during examination-in-chief, that visibility would be better at the point at which pedestrians would arrive onto the bridge, and it seemed Network Rail relied on this fact to show that the bridge would be safe enough to use. However, then there is nothing in the documentation to enable any of the interested parties, to assess that proposal. The design freeze does not even mention the need for steps, nor was Ms Tilbrook able to state with any specificity, the number of steps which would be required or the nature of any waiting area that might be required at the top of the steps. No diagrams, or visibility splays, have been put forward.

---

<sup>297</sup> OBJ 148 W-024 & W-025 Mr Bird; OBJ 148 W-019 Mr Russell

<sup>298</sup> NR12 page 65

- 5.47.27 Mr Russell explained that, in terms of visibility assessments, he would expect to have a topographical survey and plotting of visibility before the detailed design stages. Bearing in mind that both objectors, and the RSA auditing team raised concerns over the safety of this bridge, it is baffling that Network Rail has not put forward this type of evidence to support its claim that visibility will be adequate for use. Clearly, neither the Inspector nor the Secretary of State can be satisfied from the information before him that the proposal will be safe.
- 5.47.28 Notably, Mr Russell himself was not prepared to walk over this bridge when on site because he did not consider it safe enough, notwithstanding that, in his words, he is "pretty thick-skinned" and is used to walking on busy lanes. He was, therefore, unable to measure, or accurately estimate, the width of the road, but in response to the Inspector's questions he confirmed that once a pedestrian commences walking on this bridge they are committed to continue in order to reach the other side - this is a particular concern.
- 5.47.29 Mr Bird, likewise, gave first-hand evidence of his experience assessing the bridge, explaining that he climbed the embankment to reach the parapet but did not step onto the road because of safety concerns due to the blind spot caused by the bridge parapet and the volume of traffic.
- 5.47.30 On visibility, Ms Tilbrook explained that whilst there was 15m of limited visibility on the bridge, the Highway Code stopping sight distances could still be achieved. For the reasons given above, in relation to E29 and E54, it is not acceptable to rely on drivers making an emergency stop to show that a route is safe, especially in circumstances where those drivers are unlikely to expect to see pedestrians popping out at the crest of a narrow hump-back bridge.
- 5.47.31 In addition to being unsafe, the alternative is too long. The Ramblers estimate it would take 40 minutes one-way for users to follow the proposed route from the church in comparison to walking south-west to HA4. Even if Ms Tilbrook's calculation of 25 minutes one-way is used, it is unclear why Ms Tilbrook considers that an extra 25 minutes to a walking route will not put people off using this connection point.
- 5.47.32 The route over HA4 is being used today. Mr Bird highlighted its links to the pretty St Mary Magdalene Church in North Ockendon and stretches of open countryside. According to Mr Bird, the Ramblers use this path on regular occasions, leading walks around 3 or 4 times a year. Should Network Rail's proposal be authorised, this ROW connection will be lost to the community because realistically people would not (and, indeed, should not, on safety grounds) use the alternative route.

**David Atkins (OBJ 176)<sup>299</sup>**

- 5.47.33 Many of the proposals involve walking along a road, often with no footpath. Network Rail seeks to transfer the low risk of an accident on a level crossing into a much higher risk of one on the public highways. In the case of HA4, the road is particularly narrow over the bridge and the parapets would prevent the road from being widened to create a footway. There is limited visibility due to the hump backed nature of the bridge. The road is well used and has a bus service in each direction every 15 minutes. It is also used as a cut through between Ockendon and Upminster if there are problems on the M25.
- 5.47.34 Many of the diversion routes are long; no crossing diversion should be over 1Km and should ideally be less than 500m. On single track lines the time spent crossing the railway is very short and the volume of train traffic is much less than on multi track lines. An even stronger case needs to be made for the closure of crossings on single track lines.

**Inspector's Conclusions**

**SOM4(a) The likely impacts on landowners, 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**

- 5.47.35 In terms of the impact upon landowners and occupiers, the owner of the land to the east of the M25 would experience a reduction in the burden on the land with the extinguishment of part of FP 252. Mr Mee's land on the western side of the M25 would see the creation of new footpaths to the west of the M25. Mr Mee also has concerns about the impact the creation of new rights of way would have on the security of his property.
- 5.47.36 Detailed design of the means of access to and egress from Mr Mee's land may mitigate some of these concerns. The impacts of the proposed creation of new public rights of way may be addressed through detailed design and the provisions as to compensation.

**SOM4(b) Impacts on other users**

- 5.47.37 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

**SOM4(c) Impact on flood risk**

- 5.47.38 There is no indication that the proposal would have any impact on flood risk.

---

<sup>299</sup> OBJ 176 did not appear at the inquiry

**SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

5.47.39 The crossings are not in the vicinity of Sites of Special Scientific Interest or local wildlife sites.

**SOM4(f) Impacts on the landscape, agricultural land and forestry**

5.47.40 The proposed footpaths cross land in active arable production. Although the proposed footpaths will be field edge to minimise disruption to the productive capacity of the land, there is likely to be some adverse impact on agricultural operations.

5.47.41 The proposed footpaths would be unsurfaced and are unlikely to have any significant impact upon the immediate landscape. Detailed design of any access points to mitigate concerns regarding unauthorised access will limit any adverse impact upon the immediate landscape at Pea Lane.

5.47.42 Other than the permanent removal of the infrastructure associated with the pedestrian crossing and the erection of fencing to prevent trespass onto the railway, there will be no impact upon the landscape arising from the closure of HA4.

**SOM4(g) Any other environmental impacts including noise and health**

5.47.43 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed**

5.47.44 The available evidence suggests that HA4 serves a recreation and leisure function as part of a walk in the countryside surrounding South Ockendon. Although the 9-day camera census did not record any use during that period, it is evident that people such as Mr Bird and groups of walkers make use of the crossing even if on a limited, occasional basis.

5.47.45 The main issues arising from the proposed diversion of FP 252 and the closure of HA3 related to the use of the Ockendon Road bridge as part of the diversionary route and the length of the route suggested as an alternative to crossing the railway at HA4.

5.47.46 The assertion made by the objectors that the overbridge is unsafe for use by pedestrians is reflected in the RSA carried out on behalf of Network Rail which recommended that a footway be constructed at the bridge. It is recognised that the RSA had been considering a proposal to re-route pedestrians along Pea Lane and Ockendon Road, and that Network Rail had amended the proposal to address the risks identified with regard to on-road walking. However, the development of the proposal to include field-edge paths either side of the road bridge does not address the issues of concern raised by the RSA in relation to the road bridge itself. Although the RSA

recommended the creation of a footway over the bridge, there are no works proposed to the bridge as part of this diversion.

- 5.47.47 Pedestrians diverted to the road bridge would therefore have to walk in the road facing oncoming traffic. There are very narrow verges on the bridge between the edge of the tarmac and the parapet; there is no zone marked out on the road for the use of pedestrians. To overcome the limited visibility available to pedestrians it is proposed to route pedestrians to the end of the bridge parapet, raising them up the embankments via a flight of steps.
- 5.47.48 Whilst this proposal would bring users out closer to the crest of the bridge, it also brings them in close proximity of the end wall of the parapet. The Ramblers evidence was that from the top of the embankment the blind spot on the bridge restricted sight of approaching vehicles. I saw from my site visit that on the western side of the bridge the parapet blocked the view of oncoming traffic. The only way to determine whether there was or was not a vehicle on the bridge was to either lean out or step out into the road.
- 5.47.49 The ATC data shows that vehicles exceed the posted speed limit when approaching this hump backed bridge from the east. Stepping out into the road without any advance knowledge of whether such a vehicle is approaching is inherently unsafe for the pedestrian. No provision is made in this proposal for the segregation of pedestrians from vehicles crossing the bridge as was recommended by the RSA.
- 5.47.50 Mr Bird's evidence was that St Mary Magdalene's church was a focal point for a walk in the area as the small car park at the church was a useful meeting point and that group walks headed south west using HA4. For those users intent on travelling in such a direction, the proposed route would increase journey times by between 25 and 40 minutes that would require the use of steps at the overbridge, the overbridge itself and crossing Pea Lane twice. Although the proposed alternative would maintain an east-west means of crossing the railway it would be convoluted and counter-intuitive to those current users of HA4 who are likely to be inconvenienced by such a route in addition to that route being unsafe as users would be put at risk of collision with vehicles at the road bridge.
- 5.47.51 The Equality and Diversity Overview report ratings for HA3 and HA4 were green as HA3 was closed and as the approaches to HA4 were uneven; no DIA was carried out. However, those who may have found difficulty in negotiating the physical features of the approaches to HA4 would have to contend with the limitation of the proposed route in terms of safety. In this respect, those with protected characteristics would be affected to the same extent as the rest of the population.
- 5.47.52 Network Rail submits that the conditions on the ground may not reflect the proposal set out in the draft order. However, the route described on sheet 54 of the deposited plans would require pedestrians to cross the railway via the Ockendon Road bridge emerging on the road by the bridge parapet. For the reasons given above, that proposal is unsafe.



### **Overall conclusion**

5.47.53 Considering all the above, and all other matters raised in relation to HA3 and HA4, I conclude that the Secretary of State should not include these crossings within the Order as the proposal would not provide existing users of the crossings with a suitable and convenient alternative means of crossing the railway.

5.48 **T01 No. 131**

**Description of the crossing**

- 5.48.1 Footpath 145 crosses the Tilbury Loop of the Fenchurch Street to Shoeburyness railway line to the north of the town of Purfleet. The footpath commences on Tank Hill Road slightly north-east of the entrance to the RSPB's Rainham Marshes Nature Reserve. The footpath runs in a generally easterly then north-easterly direction, crossing the railway and the Purfleet Arterial Road to provide a link to the public rights of way network leading to Aveley.
- 5.48.2 T01 is approached via an unsurfaced path running to the south of a small industrial estate and through a small area of woodland with Mardyke to the south of the woodland. The path is muddy in places and uneven. Footpath 145 crosses the Tilbury loop line and passes under the HS1 railway line via an unsealed surfaced path and runs to the Arterial Road. There is no direct link to other public rights of way at the western end of the footpath, although access to and over Rainham Marshes is available at the RSPB reserve. Footpath 145 continues on the eastern side of the Arterial Road running over gently rising ground in a generally north easterly direction to the overbridge crossing the A13 near Aveley.
- 5.48.3 There are several stiles along the line of FP 145 and wicket gates in the railway boundary fences. T01 is a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. The railway comprises a double set of rails and carries passenger and freight trains at speeds of up to 50mph. The ALCRM score for this crossing is C6.
- 5.48.4 A 9-day camera census undertaken in July 2016 recorded a total of 8 pedestrians using the crossing with the busiest days being Saturday 9 July and Monday 11 when two users were recorded on each day. Sighting is deficient on the upside looking towards a train approaching on the up line. Whistle boards are present by way of mitigation but are only effective outside of the NTQP; a COVTEC system had been stolen shortly after its installation. In December 2007 there was an instance of misuse at this crossing.

**Description of the proposal**

- 5.48.5 It is proposed to close T01 to all users, extinguishing the PROW over the crossing and over the entirety of FP 145 to the west of the Arterial Road. On the east side of the Arterial Road, it is proposed to divert part of FP 145 onto a flood bund to improve accessibility toward Aveley in times of flood. The diverted footpath would emerge on the Arterial Road via a gate located approximately 75m to the south of the current route.
- 5.48.6 Those users undertaking a journey between Aveley and the marshes via FP 145 would be diverted along the flood bund to the Arterial Road before turning north on the footway of the road to a pedestrian controlled crossing opposite New Tank Hill Road. Once over the crossing, users would then walk on the footway of New Tank Hill Road crossing the HS1 and the Tilbury Loop

via the overbridge to a point close to the existing western terminus of footpath 145. The increase in journey distance using the proposed alternative would be approximately 700m.

### **The Case for Network Rail**

- 5.48.7 The proposed alternative route maintains the east – west connectivity of the existing route albeit along the footways of the Arterial Road and New Tank Hill Road. The diversion of the footpath east of the Arterial Road would improve the amenity of the network in times of wet weather. This was a modification to the original proposal arrived at in response to objections made by the affected landowner and is shown on replacement sheet 52 in the order limit plans.
- 5.48.8 An RSA of the proposed route did not identify any issue associated with the proposals; ATC data was collected on the Arterial Road south of the junction with New Tank Hill Road which showed that the 85<sup>th</sup> percentile speed of traffic was 42.4mph where the posted limit was 60mph. Both the Arterial Road and New Tank Hill Road have footways which are considered safe for pedestrian use given the observed speed of vehicles using the roads.
- 5.48.9 The camera survey data and feedback received suggests that FP 145 is used infrequently by a limited number of people to access the wider footpath network or as a link between Purfleet and Aveley. It is considered that the proposed alternative would serve a similar purpose.
- 5.48.10 It was accepted that there would be a change in the nature of the walk, but Ms Tilbrook noted it was important to put that in context. The current route interfaces with both HS1 and the Tilbury loop railway. The Arterial Road must be crossed unaided - without formal pedestrian crossing provision. Even on the western side of the railway users would be running alongside the industrial estate – walkers are “channelized”.
- 5.48.11 As regards HS1, Network Rail strongly objects to the suggestion, raised first in cross-examination of Mr Kenning and maintained in the Ramblers’ closing submissions, that “*It is apparent that HS1 .... has specifically catered for the pedestrian access point at TO1 by providing an underpass.*” No evidence was adduced by the Ramblers to support this contention during the inquiry. It is, at best, speculation.
- 5.48.12 Mr Bird disagrees with Ms Tilbrook’s appraisal. However, Network Rail maintains that on an objective assessment of the proposed diversion route, the Secretary of State may properly be satisfied that it would provide a suitable and convenient replacement for existing users. The Order may therefore be confirmed with the proposed modification.

### **The Case for the Objectors who did not appear at the inquiry**

#### **Kelvin Weatherill (OBJ 015)**

- 5.48.13 Although the principle of the diversion of FP 145 where it crosses Mr Weatherill’s land is accepted, objection is made to the use of plot 21 which

is not required to create the proposed diversion. Plot 22 could be extended westward to the property boundary (where there is an existing gate) with the footpath being continued along the existing public highway. Re-routing the footpath to the property boundary will mitigate the chance of pedestrians trespassing over the land to reach the former line of the footpath.

### **R J Burnley (OBJ 074)**

- 5.48.14 The use of plot 21 for the footpath would introduce an unnecessary dogleg and unless the land was made up to the level of the bund would remain liable to flooding. A new access should be made adjacent to the field gates at the arterial road along with stiles to ensure the land remains stock-proof.

### **The Case for the Objectors who did appear at the inquiry**

#### **The Ramblers (OBJ 148)<sup>300</sup>**

- 5.48.15 In reality, Network Rail's proposals for T01 are for an extinguishment of part of FP 145, not a diversion. Whilst Network Rail is proposing to divert FP 145 to the east of the A1306, this is simply a "nice to have" add-on – designed to address flood concerns on the existing route. It does not provide any new "alternative route".
- 5.48.16 Mr Kenning accepted, during cross-examination, that the "diversion" for this crossing is really just the route highlighted in orange on the design freeze plan. The entirety of this route is available for use today.
- 5.48.17 Seen from this perspective, Network Rail's justification for closing this level crossing rests entirely on the generic issues associated with level crossings on the rail network as a whole which is clearly insufficient. What is more, it is apparent that HS1 (running parallel to the stretch of railway line that T01 traverses) has specifically catered for the pedestrian access point at T01 by providing an underpass. Although Mr Kenning doubted whether it had been the specific intention of the HS1 project, he had not been involved with that project and could not speak with certainty on it. It would be counter-intuitive, in a setting where Non-Motorised User access has been catered for by surrounding infrastructure, to break-up the ROW network.
- 5.48.18 For those who currently use the crossing, the proposed "alternative route" is clearly not an acceptable replacement. Mr Bird is familiar with the area, having visited it on several occasions in 2017. His evidence highlighted the issues surrounding the quality, and experience, of walking the alternative – users will be required to walk alongside a busy, urban road, subjecting themselves to traffic, noise and fumes.
- 5.48.19 Mr Bird's evidence was that he felt intimidated by the lorries parked up in the layby adjacent to the footway on the north-eastern side of the Arterial Road. The immediate area was strewn with rubbish and waste material. The

---

<sup>300</sup> OBJ 148 W-001 Mr Bird

proposed alternative along the Arterial Road was a miserable, unpleasant experience, devoid of natural features and dominated by vehicle movement. In his view path users would only use the proposed alternative if there was no other choice.

- 5.48.20 Ms Tilbrook noted that both the alternative and existing routes have an "urban feel" about them, but Mr Bird noted the contrast with the existing route which he found to be quiet and secluded with the adjacent woodland providing a rural feel.
- 5.48.21 The proposed route will add approximately 700m to a journey along an unpleasant major road, factors which it is believed will discourage pedestrians from using the route as part of a journey to and from Aveley and who may use their cars instead contrary to the Government's aim of encouraging walking.
- 5.48.22 T01 is a valued pedestrian access point across the railway, used by the Thurrock Ramblers. It provides a direct and easy link between the Rainham Marshes and Aveley, part of one of the few crossing points over rail and road infrastructure in this area; a valuable local amenity would be lost as a result of this proposal. The proposed diversion is longer, harder to navigate, unsafe in parts, less secure, noisier and less enjoyable for pedestrians. It is not suitable nor convenient.
- 5.48.23 There are a limited number of footpaths in this area. Network Rail has not justified the need to lose this one.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.48.24 In terms of the impact upon the owners and occupiers of the land to the east of the arterial road, the proposed diversion of part of FP 145 shown in replacement sheet 52 addresses the concerns they had raised. A means of access to the field adjacent to the existing field gates which maintains the field as stock-proof is a matter to be determined at the detailed design stage in consultation with the owner, occupier and the Highway Authority. Any impact through disturbance or loss can be addressed through compensation.
- 5.48.25 On the west side of the Arterial Road, the extinguishment of FP 145 will lift the burden on the land. No party will find themselves unable to access their property or to carry on their business or undertaking if the crossing were to be closed and footpath 145 extinguished.

#### **SOM4(b) Impacts on other users**

- 5.48.26 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in

which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.48.27 There is no indication that the proposal would have any impact on flood risk. At the time of my accompanied site visit the land under the elevated section of the HS1 line was flooded with the exception of that part where footpath 145 passed underneath. This section of the path appeared to have been raised to prevent inundation by the water which was evident under other parts of the raised structure. The proposal is unlikely to have any material impact upon the flooding which occurs at this location.
- 5.48.28 Whether or not the underpass had been deliberately created to accommodate FP 145 as part of the HS1 construction works is not a matter for determination. Irrespective of the origins of the underpass, the fact remains that FP 145 passes under the railway. It is the Ramblers contention that the route so accommodated should not be dispensed with as part of this project; Network Rail disagree. The retention of the footpath within the HS1 scheme does not however, preclude the subsequent diversion or extinguishment of the footpath if the appropriate criteria are met.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.48.29 T01 is located to the east of the RSPB reserve at Rainham Marshes. The closure of T01 and the proposed alternative will not have any adverse impact upon the RSPB reserve.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.48.30 The impacts upon agricultural land are limited to Mr Weatherill's land where the diverted section of FP 145 will run over a flood bund which is an access track into the adjacent fields. The remainder of the land crossed by footpath 145 is not used for agriculture or forestry.
- 5.48.31 The erection of 1.8m high chain link fencing to secure the boundaries of the railway will not have any material impact on the semi-urban landscape which has an industrial estate to the north-west and HS1 immediately to the east.

#### **SOM4(g) Any other environmental impacts including noise and health**

- 5.48.32 The proposed alternative to FP 145 would route path users alongside the eastern footway of the Arterial Road. The Ramblers description of the immediate environment around the footway is accurate with noise from road traffic and the exhaust gases produced by passing vehicles. Between the footway and the carriageway is a lay-by which is used predominantly by heavy goods vehicles and their trailers. Whereas the current path passes under one railway line and crosses a second, the path follows the northern edge of the woodland which abuts the Mar Dyke. Although the proposed

alternative route would serve the same purpose as the current path, users would be subjected to greater road noise and exhaust gases than exists on FP 145.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.48.33 The main issues between the parties are the character of the proposed alternative route in comparison with what is currently available and the length of the alternative route.
- 5.48.34 Although the current line of FP145 runs adjacent to the industrial estate immediately to its north, it runs through an area of undeveloped woodland to the north of Mar Dyke. For a path in such an extensively developed part of Essex, the footpath has a distinct rural ambience to it. That ambience is interrupted by having to cross the railway, pass under HS1 and then cross the Arterial Road. There are rural aspects to the footpath, but it is not free of the urbanised aspects of the landscape in this part of the county.
- 5.48.35 The alternative route proposed follows the footway on the north-eastern side of the Arterial Road with the verge which once separated the carriageway from the footway serving as a lorry and trailer lay-by. At the time of my site visits a walk along the proposed alternative was a walk alongside large stationary vehicles with the nearby hedgerow strewn with litter and rubbish, as was described by the Ramblers. It is not difficult to understand Mr Bird's reaction to walking along this part of the footway.
- 5.48.36 The remainder of the proposed alternative follows the footways of the Arterial Road and New Tank Hill Road utilising a pedestrian controlled set of lights at the junction of the two roads. Users of the current path have to cross the Arterial Road to link both parts of FP 145 but currently have no assistance and have to wait for a suitable break in traffic flow. The pedestrian crossing would make crossing the road easier and it is clearly a safer means of crossing the road.
- 5.48.37 Users would cross the railway via the footway on New Tank Hill Road bridge and would then cross Tank Hill Road to enter the RSPB reserve if that was their intended destination and purpose of using FP 145. The proposed alternative would increase a journey by 600m. A journey from Aveley to the marshes currently involves a walk of approximately 1.2Km; the diversion would increase the length of such a journey by 50%.
- 5.48.38 However, the proposed alternative would be safer for users as it provides a controlled means of crossing the Arterial Road and removes the need to cross the railway at grade at a point where there is insufficient sighting.
- 5.48.39 Whereas under the provisions of s119 of the 1980 Act an assessment has to be made on the effect of the proposal on the enjoyment of the path or way as a whole, the weight to be attached to the character and enjoyment to be derived from a route under section 5(6) of the 1992 Act is limited, as the character of the route is secondary to its function.

- 5.48.40 Although the character of a route and the ambience it may have may influence a decision as to whether or not to take a walk along it, as suggested by the Ramblers, section 5(6) is concerned with whether the proposed alternative would perform the same function as the existing route; that is, would the alternative allow the user to undertake their journey without an excessive or convoluted diversion being required and would the alternative be safe for use by the public?
- 5.48.41 In the current case, if the purpose of a walk were for quiet enjoyment of the countryside, a user would not choose the alternative route as it is anything but quiet. However, if the purpose of a journey was to access the RSPB reserve or to travel into Purfleet, then the proposed alternative would serve that purpose. In this respect the proposed alternative is suitable. Furthermore, as the alternative negates the risks involved in crossing the Arterial Road and the railway, it would be convenient for many users despite the increase in length.
- 5.48.42 The Equality and Diversity Overview report rating for T01 was green and no DIA was carried out. The increased journey distance might be an issue for some people, but taking into account the physical condition of the existing approaches to the crossing, the stiles at the railway boundary, and the nature of the Arterial Road, I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

### **Overall conclusions**

- 5.48.43 Considering all the above, and all other matters raised in relation to T01, I conclude that the Secretary of State should include T01 within the Order as the proposed alternative would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.



## 5.49 **T04 Jefferies**

### **Description of the crossing**

- 5.49.1 Footpath 32 crosses the Tilbury Loop of the Fenchurch Street to Shoeburyness railway line approximately 1.2Km north of Stanford-le-Hope railway station. To the east of the railway is a housing estate and to the north and west are arable fields. The A13 Stanford-le-Hope bypass is located to the west of these fields with open agricultural land to the west of the bypass. Footpath 32 runs in a south-westerly direction from the A13 to the housing estate on the east of the railway.
- 5.49.2 Footpath 32 approaches T04 from the north-west along an unsurfaced cross-field path, crosses the railway and then continues in a generally south-easterly direction between the rear garden fences of residential properties to emerge on First Avenue. The definitive map shows FP 32 as crossing the A13 and continuing in a generally north-easterly direction towards the Langdon Hills. There is a gap in the hedge at the point where FP 32 meets the A13 and a gap within the Armco barrier which separates northbound and southbound traffic.
- 5.49.3 T04 has pedestrian gates in the railway boundary fence and has decking boards at the crossing to facilitate pedestrian access. This crossing is a protected crossing in that a MSLs system has been installed to mitigate insufficient sighting of trains approaching the crossing in an up direction when viewed from the up side of the line. The MSL system is an 'on demand' system whereby users push a button to receive an indication of whether it is safe to cross.
- 5.49.4 The railway comprises a double line of rails and carries passenger and freight trains at line speeds of up to 70mph. The ALCRM score for this crossing is D5. A 9-day camera census carried out in July 2016 showed that 147 people used the crossing of which 2 were accompanied children and 6 were unaccompanied. The busiest day was Sunday 10 July when 26 uses were recorded; only two days showed use in less than double figures<sup>301</sup>.

### **Description of the proposal**

- 5.49.5 It is proposed to close the crossing to all users and to extinguish the PROW over the crossing and that part of FP 32 between the A13 and the southern side of the crossing.
- 5.49.6 The proposed diversion would result in FP 32 being diverted onto a new 2m wide, unsurfaced field-edge path running along the east side of the A13. Users would then be diverted onto new stepped access<sup>302</sup> west of the railway to land adjacent to the off-slip of the A13 crossing the railway by means of the A1014 Manorway overbridge on along the existing footway. Users would then be diverted onto new stepped access east of the railway

---

<sup>301</sup> NR25 3267-LON-T04 page 6

<sup>302</sup> 36 steps on one side, 40 steps on the other – Ms Tilbrook's oral evidence in chief

through a gap created in the acoustic barrier east of the existing bridge parapet. Users would then be diverted northeast along a new 2m wide footpath within Network Rail land and then onto an existing surfaced estate path to connect with the residual part of FP 32 east of T04. Chain link fencing (1.8m high) would be installed at the railway boundaries to prevent trespass and the crossing infrastructure would be removed.

- 5.49.7 The proposed path would result in a walker having to travel an additional 1,150m to travel between the A13 and the residual part of FP 32 east of the railway.
- 5.49.8 It is also proposed to create a new section of field-edge footpath to link FP 36 with the diverted FP 32. A new 2m wide unsurfaced footpath will be created under the Manorway overbridge and a 3m wide cycle bridge<sup>303</sup> would be created to span the watercourse to the north of footpath 36.

### **The Case for Network Rail**

- 5.49.9 T04 does not have sufficient sighting to meet industry standards and was therefore fitted with an MSL overlay system a consequence of which is that inspection of the crossing now occurs every 7 weeks and the signalling team has to inspect and test the MSL equipment every twelve months.
- 5.49.10 As with E05 and E15, Network Rail maintains that closure of this crossing – despite the fact it is protected by MSL and not merely reliant on users to ‘stop, look and listen’ – is entirely consistent with the strategic objectives which underpin this Order.
- 5.49.11 The creation of a new footpath underneath Manorway and the new footbridge north of FP 36 would carry a right of way on foot but would not preclude any future proposal of the highway authority to create a cycleway at this location.
- 5.49.12 A full DIA was undertaken following a scoping exercise. The DIA concluded that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route is considered an appropriate solution and recommended further action be taken with regard to the proposed underpass.
- 5.49.13 Modelling of the impact the modification of the noise attenuation barrier at Manorway would have on residents had been undertaken which showed that there would be little or no impact on the houses nearest to the barrier arising from the adjustment proposed.
- 5.49.14 Jefferies level crossing provides access to the rights of way network to the north and west of Stanford-le-Hope. A footpath link to Horndon-on-the Hill approximately 1,600m in length uses the level crossing and a northern PROW runs approximately 7,000m to the village of Dunton. There is a link to the village of Dry Street to the east over 3,700m in length. The

---

<sup>303</sup> Proposed Work No 5

alternative routes, stepped and level, improve links to the A13/Manorway junction where a number of footpaths within the PROW network meet.

- 5.49.15 It was Ms Tilbrook's evidence that a diversionary route was required despite Mr Benton's concerns regarding low usage of the crossing, and the issues presented by the A13 in terms of onward routes to the west. In cross-examination, Mr Kenning said that Thurrock Council had aspirations to maintain access to the overbridge to the north via the hedged lane which ended at FP 32. The southern link was proposed in addition to the route utilising Manorway both to provide a step-free route for users. It was considered that some people might be approaching the crossing from the south of Manorway and the southern link would obviate the need for such users to travel to the crossing point only to then have to head south again before turning north once more to their intended destination.
- 5.49.16 The initial proposal was subject to a Stage 1 RSA which identified a risk of collision between pedestrians and vehicles if pedestrians had to use the eastbound carriageway of Manorway and recommended that a footway should be provided. Site surveys have established that there is sufficient width between the bridge parapet and the road safety barrier for such a footway.
- 5.49.17 The Ramblers take issue with the accessibility, length and quality of the route. Ms Tilbrook explained in evidence why she considered the proposed routes were suitable and convenient, having regard to the alternatives provided by Manorway and the slightly longer step-free access. The proposed diversion maintains access to the wider footpath network. It was Ms Tilbrook's view that in regard of those taking shorter walks, the diversion route was, itself, the same nature of walk.
- 5.49.18 Mr Benton objects to the creation of the new PROW on his land. He has suggested an alternative which would avoid the need for creation of those new footpaths (other than that on the east of the railway) with users instead being diverted via FPS 36, 83, 34 and having to negotiate the roundabout to the west of Manorway. Ms Tilbrook explained why she did not consider that would provide a suitable and convenient alternative. This is a large, grade separated junction, with really no pedestrian facilities (there are, for example, no traffic lights regulating pedestrian movements: those negotiating the roundabout are dependent upon the vehicular traffic lights). Ms Tilbrook highlighted the concerns raised by the highway authority when this route was suggested as an alternative during consultation<sup>304</sup>.
- 5.49.19 Network Rail maintains, therefore, that its proposed diversion route would be a suitable and convenient replacement for existing users. That proposed by Mr Benton would not. The Order may properly be confirmed without modification.

---

<sup>304</sup> NR/31/2 tab 5 page 404; Ms Tilbrook submitted that the route under discussion had been that suggested by Mr Benton

## **The Case for the Objectors who did not appear at the inquiry**

### **S Dixon & V Molton (OBJ 021)**

5.49.20 This crossing is used every day for the walking of dogs as it permits the exercise of a dog without having to cross any roads. It is regularly used by many people for recreation and leisure purposes. It would be a great shame to lose access to the nearby footpaths.

### **C Addis (OBJ 044)**

5.49.21 Network Rail's leaflet communications to residents have threatened that the trains would start to sound their horns on approach to the crossing at any time of the day or night and follows on from the erection of whistle boards around 2006 to get their own way. The crossing has been fitted with an MSL system which has not yet been commissioned which raises the question of how much the system cost and why it has not been commissioned?

5.49.22 This crossing is no more unsafe than it has been since the railway was constructed over it and no more dangerous than any other crossing not on Network Rail's list for closure. There have been no accidents at this crossing in the past 41 years.

### **Sally Khawaja (OBJ 091)**

5.49.23 The site notices did not make it clear where the replacement crossing was to be located. Jefferies is used to access the woods at One Tree Hill; the crossing at Morley Hill cannot be used as the gate is difficult to operate making it difficult to lift bicycles over. The gates at Jefferies open wide to allow a bike to be wheeled over the railway. The crossing is an important access to the countryside to the west of the railway and many dog walkers use this route, particularly in the summer months.

### **Thurrock Council (OBJ 186)**

5.49.24 Thurrock Council objected to Network Rail's initial proposal on the following grounds: a) the route south-east of Manorway was shown to run through land which had received outline planning permission for 153 dwellings; b) noise attenuation barriers which protect residents from noise from Manorway would have to be removed to create an access to Manorway from the embankment; c) given the high level of usage of the crossing, there is scope for additional works to be undertaken at the crossing rather than imposing an almost 2Km diversion on existing users, the construction of steps and the removal of noise barriers. A footbridge should be considered at the crossing point.

5.49.25 All routes constructed should be suitable for cycling and all routes to the west of the railway should be of bridleway standard to enable equestrian activities from Horndon-on-the-Hill.

5.49.26 Disappointment was expressed at the reintroduction of whistle boards in December 2016 and the terms of letters sent to residents which clearly

implied that whistle boards would be removed if residents were to support the closure of the crossing.

5.49.27 By email dated 17 August 2017 in a response to Network Rail the Council stated *"we initially objected to the closure of this crossing based on its high level of usage – up to 30 daily crossing. Following our discussions of route options going forward, we will withdraw this particular objection, provided the route options being proposed are delivered. However, this does not take away from any concerns and objections still lodged as a result of the meeting, in particular, the issues regarding access and use of the bridge on the A1014 Manorway"*.

### **The Case for the Objectors that did appear at the inquiry**

#### **E & K Benton Ltd (OBJ 030)**

- 5.49.28 First and foremost, there is no need to close Jefferies level crossing as it meets all the necessary criteria to be considered a 'safe' place at which to cross the railway.
- 5.49.29 If the crossing has to be closed, then the existing footpath network at the interchange roundabout should be used. Using the footpaths which leave the interchange roundabout would remove the need for a new path on the eastern side of the A13 and provide a link to FP 32 on the west of the A13 via FPs 83 and 34. There are wide footways on the overbridges and the traffic leaving the slip roads are controlled by traffic lights.
- 5.49.30 If the proposal is to close Jefferies but maintain links with FP 32 on the west of the A13, then using the paths at the roundabout would achieve this aim and would do away with the need to negotiate the dangerous stretch of FP 32 which crosses the dual carriageway. A walk from the east side of the crossing to FP 32 on the western side of the A13 using the footpaths at the roundabout takes no more than 35 minutes. Even without pedestrian lights, the interchange was easy and safe to navigate using the traffic lights and with wide paved areas on both sides.
- 5.49.31 Thurrock Council may not wish to encourage the use of this path, but FP 83 is used annually as part of the popular 'Stan's Walk'; there are no reports of accidents occurring to people following this walk<sup>305</sup>. To facilitate access around the roundabout, pedestrian controlled lights could be installed.
- 5.49.32 Although the proposed path might create a self-contained loop walk for nearby residents when walking their dogs, the current line of FP 32 is not used for that purpose. Access to FP 32 on the west of the A13 can be obtained without the proposed footpath on the east side of the road which should be deleted from the Order.
- 5.49.33 The proposal to install a 3m wide bridge from the Gasworks field onto the land between Manorway and FP 36 appears to be an attempt by Network

---

<sup>305</sup> OBJ 030 inquiry document 2 Photograph 5

Rail to accommodate Thurrock Council's plans for a cycleway through the area by the back door. This proposed access is not required to facilitate the closure and diversion of the crossing and should be deleted from the Order.

5.49.34 In summary, there exists a suitable route via the Stanford Interchange which would provide walkers with a satisfactory means of reaching FP 32 on the western side of the A13 if the level crossing is closed without creating additional footpaths over farmed land.

**The Ramblers (OBJ 148)**<sup>306</sup>

5.49.35 The alternative route for T04 is not suitable due to its length, quality and the significant number of steps on either side of the Manorway road bridge.

5.49.36 It was agreed between the parties that users of T04, approaching from the south, are likely to be continuing north until they reach the A13 at which point they will turn right to walk along a path alongside the A13 (which is not marked on the Definitive Map and Statement). Ms Tilbrook agreed in cross-examination that the crossing may be being used for "there and back" routes. The crossing sits in close proximity to a settlement located on the eastern side of the railway and Ms Tilbrook accepted that for any users heading from the northern part of this settlement, the impact of the diversion would be greatest.

5.49.37 The Ramblers estimate that to walk the diversion alone would take 25 minutes. For a "there and back" route, this would be an additional 50 minutes to the current walk. That is clearly an unacceptable detour. But what is more, it became apparent during the inquiry that an estimated 76 steps will also need to be climbed and descended. This will clearly impose constraints on any users with mobility impairments.

5.49.38 As with E38, there is no legal guarantee that these steps will be built in accordance with inclusive mobility requirements and the specific details are lacking. In any event, Mr Bird highlighted a concern that wooden steps – as shown on the design freeze – can become slippery if wet. There is no guarantee that the steps would not be wooden.

5.49.39 Finally, Mr Bird, who is familiar with the crossing having visited at least 3 times during this process had himself gone up onto Manorway and walked along it, in order to experience it. He emphasised the off-putting nature of that part of the diversion, noting that there was a lot of noise from the volume of traffic which he would find off-putting.

5.49.40 For these reasons, the Ramblers do not consider that the alternative route is suitable and convenient.

5.49.41 What is more, according to Mr Fisk's responses in cross-examination, Network Rail has invested between £150,000 - £300,000 to install an overlay MSL at the crossing. According to Mr Fisk, the expected lifespan of

---

<sup>306</sup> OBJ 148 W-002 Mr Bird

this technology is around 15-20 years, meaning that if MSL was installed in 2014 at this crossing, it could last until 2034. Mr Kenning accepted that no evidence had been put forward to show that T04 has had any safety incidents or adverse operational efficiency impacts. On the information before the inquiry, the Ramblers do not consider that this crossing needs to be closed.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.49.42 The principal impact of the proposal would be felt by Mr Benton's property which would see a net gain of approximately 800m of PROW being created on the land with a proportionate reduction in the productive capacity of the land. The removal of a short section of cross-field footpath would not offset the substantial increase in public rights of way on the margins of the field.
- 5.49.43 The adverse impacts upon Mr Benton's land could be mitigated through detailed design and the provisions for compensation.

#### **SOM4(b) Impacts on other users**

- 5.49.44 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.49.45 There is no indication that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.49.46 Langdon Hills SSSI is located approximately 2.5Km to the north-west of the crossing; Grove House Wood LNR is approximately 1.7Km south of the crossing. The proposed alternative will not have any adverse impact upon these sites or the features for which they have been designated.

#### **SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.49.47 The impacts upon agricultural land are limited to Mr Benton's land where the proposed paths would be created. The remainder of the land crossed by the proposed alternative paths is not used for agriculture or forestry.
- 5.49.48 The erection of 1.8m high chain link fencing to secure the boundaries of the railway will not have any material impact on a semi-urban landscape on the fringe of Stanford-le-Hope.

**SOM4(g) Any other environmental impacts including noise and health**

5.49.49 The proposed alternative path would direct users along the grass verge adjacent to the slip road to Manorway from the A13 and over the overbridge. Mr Bird provided an accurate description of the level of noise present from vehicular movements on slip road and overbridge. The level of noise present at this location is much greater than that experienced at T04.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

5.49.50 The main areas of contention between the parties are the length and accessibility of the proposed diversion. The alternative route proposed by Mr Benton would involve two flights of steps (one proposed by Network Rail and one existing that carries footpath 83) as would the proposal by Network Rail.

5.49.51 The Ramblers estimated that the route proposed by Network Rail would increase journey times by 25 minutes; Mr Benton estimated that his route to FP 32 could be walked in 35 minutes. The route suggested by Mr Benton would not address the points raised by the Ramblers regarding increased length or accessibility.

5.49.52 For a current user crossing the railway with the intention of travelling onwards on FP 32 (whether by crossing the A13 via the gap in the central reservation barrier or by heading north to the overbridge) the initial journey is approximately 100m. The proposal would require such users to undertake a journey of approximately 1.2km to arrive back at the same point. On any view, this is an excessively long diversion for users to undertake to end up at almost the same point at which they started, even for those who may be undertaking a recreational walk towards the Langdon Hills. For such users, the proposed alternative route is both excessive in terms of increased length and is circuitous in comparison to the existing route accessed from the crossing and would greatly inconvenience existing users of the crossing.

5.49.53 The proposed route to the south of Manorway via the underbridge has been included to provide step free access to FP 36 for those residents in Stanford-le-Hope south of Manorway who might wish to access the rights of way network to the west of the A13 and who would otherwise have to negotiate Manorway and the streets to its north to reach the crossing.

5.49.54 Those who are resident to the south of Manorway can already access the footpath network to the west of the A13 by utilising FP 36 and the roundabout. Mr Benton has undertaken a walk over the roundabout and has clearly exercised the required degree of care in doing so, in the same way as is required when crossing the railway. Those participating in 'Stan's Walk' from and to Horndon-on-the-Hill using FPs 37 and 83 also negotiate the roundabout, seemingly without issue. However, the proposed route from FP 36 via the underpass would provide additional opportunities for those



resident to the south of Manorway and would accord with paragraph 98 of the NPPF.

- 5.49.55 The Equality and Diversity Over report for T04 was red and a full DIA was carried out. The DIA recognised that increased distances were likely to disproportionately impact upon those who have impaired mobility but advised that as no disabled people had been documented as using the crossing in the 9-day survey such impacts should not be overstated. The DIA also recognised that stepped access at the embankments was likely to restrict access for those with mobility impairments but made no recommendations as to how such users might be accommodated within the proposed scheme. The DIA concentrated on ensuring that the underpass could be engineered to provide access at the correct gradient.
- 5.49.56 However, the underpass route would be of no assistance to those users arriving at the railway on FP 32 intending to travel north-west and who would have to travel south to Manorway to cross the railway. In addition to the additional distance resulting from the diversion, users would have to negotiate the 78 steps up to and down from Manorway.
- 5.49.57 The current crossing is flat and can be easily negotiated by all pedestrian users. The purpose of crossing the railway at this location is to engage in a walk in the countryside to the west of the A13. The suggested alternative which would serve the same function is excessively long and the stepped access introduced to the route would limit use by some with non-visible protected characteristics who are unlikely to find the existing pedestrian gates on the existing route problematic. The increased length and the creation of stepped access is likely to be inconvenient and unsuitable even for able-bodied users of the crossing. There is a likelihood that the PSED would not be met if this crossing were included in the Order.
- 5.49.58 Taking all these matters into account, I consider that there are issues with both the length and accessibility of the proposed alternative which make it unsuitable and inconvenient for current users of T04.

### **Overall conclusion**

- 5.49.59 Taking account of all of the above, and all other matters raised in relation to T04, I consider that the Secretary of State should not include T04 within the Order as the proposed alternative would not provide existing users with a suitable or convenient alternative means of crossing the railway.

## 5.50 **T05 Howells Farm**

### **Description of the crossing**

- 5.50.1 Footpath 23 crosses the Tilbury Loop of the Fenchurch Street to Shoeburyness railway to the west of the village of Fobbing. Vange and Basildon lie some distance to the north-east whilst Stanton-le-Hope is to the south-west. The crossing is surrounded by agricultural fields to the north, south and west and by woodland to the east. A small industrial area is located to the east of the level crossing.
- 5.50.2 Footpath 23 commences on the B1420 Southend Road and is an unsurfaced path with dense vegetation which runs in a generally south-south-easterly direction through woodland before emerging onto an enclosed track also known as Inglefield Road which provides access to a number of residential properties. The footpath along Inglefield Road is partly sealed but generally metalled although uneven. The footpath continues over another track known as Mill Lane which leads to the network of public rights of way to the south of Fobbing which radiate out over the Vange marshes.
- 5.50.3 T05 is a passive level crossing, requiring users to stop, look and listen for approaching trains before crossing the rails. There are stiles in the railway boundary fences. The railway comprises a double set of rails and carries passenger and freight trains at speeds of up to 70mph. The ALCRM score for this crossing is C6. A 9-day camera census undertaken in July 2016 recorded a total of 16 adult pedestrians were recorded as using the crossing<sup>307</sup>. On three days of the survey there was no use of the crossing; on all other days, use was in single figures with the busiest day being Sunday 17 July when 4 pedestrians used the path. In contrast, Fobbing AHB crossing to the north-east of T05 was used by an average 50 pedestrians per day<sup>308</sup>.
- 5.50.4 Sighting at the crossing is sufficient to meet industry standards. There has been 1 incident of misuse and 1 near miss at the crossing between 2009 and 2017.

### **Description of the proposal**

- 5.50.5 It is proposed to close the crossing to all users and extinguish the PROW over it and that part of FP 23 between Southend Road and the crossing.
- 5.50.6 A new 2m wide unsurfaced field edge footpath will be provided on the south side of the railway running to the overbridge on Southend Road to connect with the footway of that road which would then allow path users to travel north towards One Tree Hill and Langdon Hills Country Park by means of the A13 overbridge.

---

<sup>307</sup> NR25 – 3567-LON-t05 page 6

<sup>308</sup> Mr Fisk's oral evidence

- 5.50.7 Those users who would wish to travel south along footpath 23 would be directed towards the Fobbing AHB crossing on High Road and then along the footway to the junction with Inglefield Road where a journey along FP 23 and Mill Lane can continue.
- 5.50.8 The level crossing infrastructure at T05 would be removed and a 1.8 m high chain link fence erected at the crossing and along the southern boundary of the railway to prevent trespass over the railway.

### **The Case for Network Rail**

- 5.50.9 It is considered that the crossing is used regularly by a relatively small number of people to access the wider footpath network.
- 5.50.10 For those who are travelling along FP 23 and wish to access the PROW network to the west and the Country Parks, the diversion route is of comparable length, and with the new 840m long footpath which would be created, offers an off-road route which was not previously available. This new footpath almost completely replaces the need for pedestrians to use the B1420. It is considered that the amenity value would increase by removing road walking to reach BR 225.
- 5.50.11 A full DIA was undertaken which concluded that due to the availability of the alternative route in the local area to cross the railway, closure and redirection along the proposed diversion route is considered an appropriate solution. Although two flights of steps would be required to access the overbridge, the stiles at the current crossing, the location of the crossing and the condition of the approach paths limit access for wheelchairs and those with mobility problems. The DIA recommended that consideration be given to extending the footway on Southend Road. However, although the proposal included a section of verge walking, the overall use of Southend Road would be reduced by the provision of a new footpath south of the railway. It is therefore considered not necessary to extend the footway.
- 5.50.12 It is considered that there is no direct connectivity from the level crossing to the wider public rights of way to the north of the railway. Ongoing public rights of way lie to the southwest and northeast of the level crossing and currently require the use of road walking to reach these public rights of way. The proposed diversions to the southwest and northeast will maintain and improve the desire lines provided by the existing PROW in terms of connectivity to the wider network and services.
- 5.50.13 ATC data<sup>309</sup> was collected on High Road which showed an average 2-way daily traffic flow of 2,966 vehicles and 85<sup>th</sup> percentile speed of vehicles of 40.6mph where the posted is 60mph. The proposals for the use of High Road were considered appropriate in the light of the traffic data obtained.
- 5.50.14 The main objections raised at inquiry related to road safety, the length (and nature) of the proposed diversion routes, and impact on affected

---

<sup>309</sup> NR32/2 tab 1 p 72

landowners. As to road safety concerns, these primarily related to the use of road walking in the vicinity of Fobbing level crossing, and along the B1027.

- 5.50.15 Fobbing level crossing is used by pedestrians, as well as vehicles, today. The physical set-up of the level crossing is similar to that found at Pork Lane (E47 Bluehouse), with footways either side demarcated by white lines. There are footway approaches to the crossing on all sides – save for a section to the south where there is a short section with narrow verge and no footway.
- 5.50.16 This was identified in the RSA, and the provision of a footway recommended. However, as Ms Tilbrook explained in her evidence, given the existence of the footway on the other side of the road, the traffic speeds, levels and opportunities to cross, the wider journeys being undertaken, and how that section of the highway was being used today, it was considered that the proposal could be put forward without provision of a new footway. Ms Tilbrook also explained, that provision of a new footway would be difficult to achieve in this location, without affecting the width of the carriageway – or without the need for compulsory acquisition of private land.
- 5.50.17 Network Rail maintains that its proposals for this part of the diversionary route have struck the balance correctly between the need to provide a suitable and convenient replacement for existing users of the crossing wishing to travel south, and the interests of other affected parties.
- 5.50.18 In respect of the B1027, it appeared that Mr Russell’s particular concern, in this regard, was a short section of the B1027 immediately to the west of where FP 23 meets the B1027. That is not part of the diversion route shown in the design freeze plan. As Ms Tilbrook explained in her evidence, the point where FP 23 currently meets the B1027 is not a destination. It is not the start, or end, point of a journey – as is clear from the design freeze plan itself.
- 5.50.19 There is simply no reason why a person diverted from the level crossing would need to walk from the western end of the B1027 to the point where FP 23 is extinguished (or beyond) – or vice versa – given that proposed diversion routes are provided to both the east and the west.
- 5.50.20 The diversion route shown on the design freeze plan represents, realistically, the ‘replacement’ which is required for closure of the level crossing. There is simply no justification for provision of a new footway in this location.
- 5.50.21 Contrary to what was suggested by Mr Bird<sup>310</sup>, Ms Tilbrook considered the purpose for which people would be currently using FP 23 would be to access the wider footpath network – specifically noting the PROW network to the west and One Tree Hill Country Park to the north of the junction with the

---

<sup>310</sup> OBJ 148 W-012 paragraph 12

A13, rather than for the pleasure of walking the footpath itself. That assessment reflected feedback received during consultation.

- 5.50.22 Network Rail maintains that the proposed diversion routes provide the same (or indeed, arguably better) connectivity as provided by the level crossing today and would serve the same purpose.
- 5.50.23 In the context of the purpose for which the level crossing is considered to be used, and how it sits within the wider network, Network Rail maintains that any additional distances involved in the diversion route are acceptable, and there is no basis for concluding that the additional distances, or environment through which users are routed, mean that the proposed diversions would not provide suitable and convenient replacements for existing users.
- 5.50.24 Mr Bird also raised concerns about use of the overbridge on Southend Road. No issues were raised with the use of this bridge by the RSA<sup>311</sup>, or indeed raised by Mr Russell. Ms Tilbrook confirmed that there were no safety concerns regarding use of this bridge; that there was adequate width for pedestrians to walk along the footway of the bridge; and there were no concerns about those additional users being able to be accommodated on the footway. She also did not share Mr Bird's concerns about perception of safety in this location.
- 5.50.25 In respect of affected landowners, there are two landowners affected by the proposed new PROW. Mr Kenning confirmed in examination in chief that there were further measures that could be explored in detailed design to address Mr Keeling's concerns around trespass, and that NR would be willing to work with the both Mr Keeling and Mr Kent as well as the highway authority to mitigate the concerns identified.
- 5.50.26 Network Rail maintains that the Order may properly be approved without modification.

### **The Case for the Objectors who did not appear at the inquiry**

#### **David Keeling (OBJ 194)**

- 5.50.27 The footpath across T05 is rarely used. The land to be crossed by the proposed footpath south of the railway is arable and is of interest to residential developers. The land has always been subject to some degree of trespass due to the proximity of residential properties and a busy road. Stiles and gates cannot be erected on the land to prevent trespass unless the land is used for livestock. The incidence of trespass, damage to crops and theft experienced in the past is likely to rise if the proposed footpath is created. Trespass, dog fouling and littering may limit the productivity and value of any crops grown.

---

<sup>311</sup> However, the RSA did not consider the Southend Road overbridge as this route did not form part of the proposal at the time the RSA was carried out.

5.50.28 Heads of terms have been agreed for a development proposal; the proposed footpath would limit the development area and impact upon value. The land is also subject to an extensive and complex land drainage scheme; any compaction of the soil through foot traffic would result in increased maintenance costs.

5.50.29 Compensation would be sought if the scheme were to proceed.

#### **Northumbrian Water Limited (REP 05)**

5.50.30 Northumbrian water Limited (NWL) is the owner of the former Vange Water Treatment Works at High Road and does not object to the proposals for T05 set out in the draft Order which do not prejudice the proposed regeneration of the former treatment works site or NWLs maintenance or use of the site prior to redevelopment.

5.50.31 The initial consultation proposal was for the alternative route to run through the former treatment works site; had that proposal been continued NWL would have objected to it<sup>312</sup>. NWL does not object to Network Rail obtaining powers to temporarily possess plot 84 for the creation of the alternative footpath.

#### **The Case for the Interested Party**

##### **Mr Kent**

5.50.32 Although Mr Kent had been served with the relevant statutory notice in April 2017 and despite making clear his opposition to Network Rail's proposals, Mr Kent did not submit a formal objection to the Order. In 1990 Mr Kent purchased the site of the former Vange water pumping station (plot 82 on the deposited plan) through which the proposed footpath will pass. Mr Kent had concerns regarding unauthorised access to the land as he had had problems with trespassers and squatters in the past; the land was kept secured and had development potential. Although the buildings associated with the pumping station had been cleared from the site there were still trip hazards on the land in the form of valves and concrete bollards.

5.50.33 There was some limited use of the footpath across the railway; the stiles were not child friendly. There had been no accidents at the crossing to his knowledge during the period he had owned the former pumping station.

#### **The Case for the Objector who did appear at the inquiry**

##### **The Ramblers (OBJ 148)<sup>313</sup>**

5.50.34 The alternative route proposed for T05 consists of both an eastern and a western limb, neither of which is suitable. On the eastern side, the

---

<sup>312</sup> NWL were initially recorded as OBJ 134

<sup>313</sup> OBJ 148 W-012 Mr Bird; OBJ 148 W-019 Mr Russell

alternative route is not safe enough to use and on the western side it is too inaccessible due to the need for considerable amounts of steps.

- 5.50.35 On safety, Mr Russell raised two key concerns: that there was insufficient footway (i) along the B1420 to the north of the railway and (ii) on the High Road in the vicinity of Fobbing level crossing. He made simple recommendations<sup>314</sup> that footways be provided in these locations or that – for the B1420 – Network Rail provide a financial contribution to the Highway Authority to undertake regular verge maintenance. The RSA flagged the same two issues. Clearly these safety concerns must be addressed.
- 5.50.36 However, Network Rail argued, somewhat bizarrely, that it did not need to address them, primarily because it does not think that users will, in reality, use this part of its suggested alternative.
- 5.50.37 Ms Tilbrook explained that the entirety of the alternative route was simply included in the design freeze in order to show how people could connect back to the other side of the level crossing - in reality she considered it very unlikely anybody will want to come back through this part of the eastern diversion. As with E28, it is impossible for her to reach these conclusions without further information on users' origins and destinations. Mr Bird, for example, highlighted that some users may arrive in the area by bus onto the B1420, with bus routes connecting to the centre of Basildon (around 10 minutes away).
- 5.50.38 Nor is it acceptable for Ms Tilbrook to rely on the fact that people may be using these stretches of roadside walking already. Firstly, the fact that they may be doing so does not mean that these are safe locations to actively encourage people to use. Secondly, it is possible that users are currently avoiding the unsafe area near to Fobbing level crossing by using T05 itself.
- 5.50.39 Overall, Network Rail is putting forward an alternative route for users of T05 to use when the crossing is closed, and that alternative route must be safe in its entirety. In failing to provide the necessary footways, Network Rail cannot assure the Inspector that this basic standard will be met. For this reason alone, the alternative is unsuitable.
- 5.50.40 On the western diversion, the route will require users to surmount a number of steps. In evidence in chief, Ms Tilbrook suggested there would need to be around two flights of 9 steps to connect the new path to Southend Road. This severely restricts accessibility on the route, particularly for any users with mobility issues. In addition, these steps will bring users straight out onto Southend Road and the humpback bridge. Mr Bird explained, that there is a narrow footway here, use of which he considered to be a safety risk.
- 5.50.41 T05 is a valuable connection point – enabling walkers to get to Fobbing Marshes, Corringham Marshes and nature reserves. The proposed alternative route is clearly unsuitable, for the reasons given above, and, in

---

<sup>314</sup> OBJ 148 W-019 page 23

any event, Network Rail has not shown any specific reason why this level crossing needs to be closed.

### **Inspector's Conclusions**

#### **SOM4(a) The likely impacts on landowners, 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**

- 5.50.42 No landowners are affected by the proposed use of the existing highway infrastructure of Southend Road and High Road as part of the proposed alternative route to the east of the crossing, nor would anyone be prevented from carrying out their current businesses or undertakings.
- 5.50.43 The land to the west of the crossing over which the proposed footpath would run crosses two landholdings. The majority of the land affected is in the ownership of Mr Keeling, however Plot 82 (see sheet 62) is the property of Mr Kent. In essence, Mr Kent's objections reflected those of Mr Keeling in terms of trespass and impact upon the future development potential of his site.
- 5.50.44 There may be items of path furniture and other infrastructure that could be considered to mitigate the risk of trespass and future contamination of the land by litter and encroachment by dogs. These are matters which would be the subject of future discussions between Network Rail, the landowners and the Highway Authority.
- 5.50.45 There do not appear to be impacts upon owners and occupiers which could not be addressed through detailed design of the proposed path or through the provisions as to compensation.

#### **SOM4(b) Impacts on other users**

- 5.50.46 Other users not included under the previous subheading would include those who use the rail network. The strategic case sets out the way in which rail users would benefit from the proposed alterations to Network Rail's level crossing estate.

#### **SOM4(c) Impact on flood risk**

- 5.50.47 No evidence has been submitted which demonstrates that the proposal would have any impact on flood risk.

#### **SOM4(e) Impacts on any Site of Special Scientific Interest and local wildlife sites**

- 5.50.48 Vange and Fobbing Marshes SSSI is located approximately 2.5Km to the south of the crossing. The proposed alternative will not have any adverse impact upon the SSSI or the features for which it has been designated.



**SOM4(f) Impacts on the landscape, agricultural land and forestry**

- 5.50.49 The impacts upon agricultural land are limited to Mr Keeling's land where the proposed paths would be created. The remainder of the land crossed by the proposed alternative paths is not used for agriculture or forestry.
- 5.50.50 The erection of 1.8m high chain link fencing to secure the boundaries of the railway will not have any material impact on the immediate landscape which includes the railway and the Stanford-le-Hope bypass.

**SOM4(g) Any other environmental impacts including noise and health**

- 5.50.51 No representations were made regarding this matter.

**SOM4(h) The suitability (including length, safety, design, maintenance and accessibility) of diversionary routes proposed for each right of way proposed to be closed.**

- 5.50.52 The main issues arising were pedestrian safety on the suggested alternative route to the east of the crossing, and the steps required for access at the western end of the proposed new footpath to provide access to and from the Southend Road overbridge.
- 5.50.53 The Equality and Diversity Overview report rating for T05 was red and a full DIA was carried out. The issue of steps was noted in the DIA which found that the nature of the approaches to the crossing and the stiles at the railway boundary made the route inaccessible to those with mobility impairments or who used a wheelchair. It would be possible to construct the steps to be as accessible as possible in accordance with 'inclusive design' principles. In cross-examination, Ms Tilbrook contended that the steps were unlikely to inconvenience those who were capable of undertaking a journey between Fobbing Marshes and One Tree Hill Country Park using FP 32.
- 5.50.54 Whereas Mr Bird considered that use of the footway at the Southend Road overbridge put users at risk, the Ramblers witness on road safety matters, Mr Russell, had no such concerns<sup>315</sup>. The footway at the overbridge is of sufficient width to carry pedestrians over the bridge in comfort and safety; there were no issues with using the footway as part of my site visits. Use of the footway on the overbridge can be considered to be safe.
- 5.50.55 With regard to that part of the diversion route using Southend Road and High Road, there was some debate as to the purpose of including in the design freeze plan a route running along that part of Southend Road to the north of the railway. No satisfactory reason was given as to why the route along Southend Road had been shown, given that Network Rail did not consider the northern end of FP 32 to be a destination in itself, nor why the marked route stops short of FP 32.

---

<sup>315</sup> OBJ 148 W-019 p22

- 5.50.56 Currently, those who wish to use FP 32 approaching from the north-east or north-west would have to undertake a journey along Southend Road (using the verge or the carriageway). However, it can be considered unlikely that use of Southend Road would continue by those seeking to use FP 32 if the path were to be diverted as suggested. There are no onward connections to the rights of way network in the immediate vicinity of the northern end of FP 32. Anyone arriving at that point would either turn to the left or right to continue their journey and the likely destination points would be served by the proposed diversion. Those approaching from the north-west would cross the overbridge to the new footpath, and those approaching from the north-east would follow High Road.
- 5.50.57 Those arriving in the area by bus would either alight at the stop near the High Road roundabout (at Five Bells or the Haywain) or at the western end of Southend Road at Garage Corner; there is no bus stop at or near the northern end of FP 32. Consequently, anyone arriving in the area by bus would not be inconvenienced by the proposed diversion. Although the RSA and Mr Russell recommended the construction of a new footway along Southend Road, it seems highly unlikely that any user diverted by the proposal would have reason to undertake such a journey. In such circumstances, users of the diverted footpath are unlikely to be put at risk.
- 5.50.58 Concerns were also raised with regard to the discontinuous footway on High Road north of Fobbing crossing. The nature of the footway had been identified in the RSA and by Mr Russell and recommendations were made that a new section of footway should be created. In its response to the RSA, Network Rail considered this unnecessary as the low volume and speed of traffic, combined with the dropped kerb already present, meant that pedestrians could readily cross the road to utilise the opposite footway.
- 5.50.59 Oral evidence as to the level of use of Fobbing AHB crossing by pedestrians was given, which indicates that there is a not-insignificant use of the crossing on foot in comparison to the use of T05. There is some merit therefore in Network Rail's submission that a new section of footway is not required as 50 people per day manage to travel along High Road without issue; they are either walking in the carriageway when circumstances permit or crossing the road as they think fit.
- 5.50.60 In all the circumstances, whilst there may be a risk involved in walking along the section of High Road north of the AHB crossing, those users of FP 32 who would be diverted would find that that risk is mitigated by the existing infrastructure of dropped kerbs and tactile paving present without a new section of footway being required.
- 5.50.61 The Ramblers contend that FP 32 is an important route providing access to Fobbing and Corringham Marshes. For those wishing to undertake such a journey from the north-west, whether from One Tree Hill Country Park or the bus stop at Garage Corner, the proposed diversion would not prevent such a journey. Similarly, those travelling from the north-east would be able to join FP 32 at Inglefield Road having crossed the railway at Fobbing

AHB crossing. Such users are unlikely to be inconvenienced by the proposed diversion.

- 5.50.62 For users heading north along FP 32 and travelling to One Tree Hill Country Park or the rights of way network to the north-west, the proposed diversion would increase such a journey by approximately 100m and would remove the need to walk in the carriageway or verge of Southend Road. Whereas the introduction of steps at the Southend Road bridge is not ideal, there would be a benefit to current users in not having to walk in the road verge of Southend Road.
- 5.50.63 For those travelling north-east from the marshes the increase in journey distance would be around 80m. Whereas users would have to negotiate the footway on High Road north of the AHB crossing, there would be no requirement to walk in the carriageway or verge of Southend Road. Users are unlikely to be inconvenienced in either case.
- 5.50.64 Whilst the inclusion of steps on the alternative route is not ideal, the character of the existing route and the restrictions it imposes, steps would not be unreasonable in these circumstances. I consider that no disproportionality (over and above that likely to be experienced by the rest of the population) should arise from the proposed diversion. The inclusion of the crossing in the Order would not appear to lead to a likelihood that the PSED would not be met.

#### **Overall conclusion**

- 5.50.65 Taking account of all of the above, and all other matters raised in connection with T05, I consider that the Secretary of State should include T05 within the Order as the proposed diversion would provide existing users of the crossing with a suitable and convenient alternative means of crossing the railway.

## 6. General Representations

- 6.1 **David Atkins** (OBJ 176) made a general objection to 46 of the crossings in the Order. However, with the exception of HA01 Butts Lane, HA02 Woodhall Crescent and HA04 Eve's, no specific grounds for objection were given to the closure of the remaining 45 crossings listed in the objection. This objector did not appear at the inquiry. The objection can be summarised as follows.
- 6.2 Network Rail should not propose the closure of a crossing if there is little or no risk. In many of the proposals, in the five-year period 2011-2015 there have been no instances of misuse, no near misses and no accident.
- 6.3 However, closure in many cases involves walking along a road, often with no footpath. Network Rail seek to transfer the extremely low risk of an accident on a level crossing into a much higher risk of one on the public highways.
- 6.4 Some of the diversion routes are long. Ignoring the aspects that these require new ROW and road walking, such diversions are unacceptable. Network Rail should bridge or tunnel these crossings if closure is necessary.
- 6.5 The closure of a crossing and the associated public footpath can impact upon the wider area which has not been considered in the proposals.
- 6.6 The time required for a pedestrian to cross a single-track line is very short, and rail traffic on these single-track lines is limited in frequency. Network Rail therefore need to make a very strong case for the closure of crossings on such lines.
- 6.7 On behalf of the **Open Spaces Society** (OBJ 207), Malcolm Lees posed some general questions in writing to Network Rail about the Scheme. Mr Lees did not appear at the inquiry. His questions can be found in his letter to the inquiry dated 10 October 2018, with the response from Network Rail being set out in NR 140.
- 6.8 **Robert Young** (OBJ 188) was opposed to the closure of level crossings in Essex and other counties. Mr Young considered that the risk of injury at level crossings was very low and, in many cases, that the risk of injury to pedestrians was far greater on many of the proposed alternatives which involved walking along narrow roads with no pavements.
- 6.9 **Andrew Stanley** (OBJ 193) made a general objection to the proposed closure of 130 foot crossings across the Anglia Region; his view was that the crossings provided a means of crossing the railway without long detours for walkers, farmers and others. Mr Stanley was of the view that the proposals were a cost-cutting exercise to benefit shareholders and others with a financial interest in the railways.
- 6.10 **Essex & Suffolk Water** (REP 03) had no objections to the proposed Scheme subject to compliance with the Company's requirements.

**7. SOM5 The Measures proposed by Network Rail to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of utility providers or statutory undertakers.**

**The Case for Network Rail**

- 7.1 An Environmental Impact Assessment Screening Request Report<sup>316</sup> was submitted to the Secretary of State in January 2017, with a request for a direction as to whether an EIA was required. The report concluded that there would be no potentially significant effects, either at individual crossings or from the Order scheme as a project. The Secretary of State has determined that an EIA was not required.
- 7.2 Network Rail has also produced a document setting out its approach to precautionary methods of work<sup>317</sup> in relation to designated sites, habitats and species and to inform mitigation and licencing requirements which may arise from field surveys undertaken prior to the commencement of works.
- 7.3 Section 48(1) of the New Road and Street Works Act 1991 (NRSWA91) gives a wide meaning to the term 'street' and Part III of the NRSWA91 sets out arrangements for statutory undertakers to provide notice of the starting date of any works to the street authority (usually the Highway Authority) and if appropriate to develop a co-ordinated approach with the Highway Authority before carrying out "street works" in exercise of their powers as statutory undertakers to place or maintain their equipment in streets.
- 7.4 "Street works" means works (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence for (a) placing apparatus, or (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular; breaking up or opening the street, or any sewer; drain or tunnel under it, or tunnelling or boring under the street) and include: (a) reinstatement of the street, and (b) where an undertaker has failed to comply with his duties with respect to reinstatement of the street, any remedial works.
- 7.5 The Order does not disapply the NRSWA91 provisions. In article 3 it provides for works in the carriageway authorised by the Order to be treated as major transport works under Part III of the NRSWA91 if they fall within the relevant descriptions in that part of the Act. Article 3 also specifically applies certain sections of the NRSWA91 to the works authorised by Articles 8 and 9 in the Order which interfere with streets.
- 7.6 Where the Order seeks to extinguish public or private rights of way under Articles 13 and 14, there is a specific exemption so as not to extinguish any rights of statutory undertakers.

---

<sup>316</sup> NR 155

<sup>317</sup> NR 167

- 7.7 The dedication of new public rights of way created by the Order over land will bring that land within the definition of "street" in section 48(1) of the NRSWA91. There will, therefore, in practice, be no interference with the rights of statutory undertakers as a result of the dedication because the statutory undertakers will be able to carry out any inspection, maintenance, repair alteration or renewal of apparatus under the NRSWA91 provisions. The statutory undertaker will be liable for the costs of any Temporary Traffic Regulation Order made under section 14 of the Road Traffic Regulation Act 1984 if the PROW needs at any time to be closed in the interests of public safety while works are carried out.
- 7.8 Any utilities identified to have apparatus in the areas covered by the Order but not identified as having an interest in a specific plot of land within the Order limits were served a landowner's notice in the prescribed form under rule 13 of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006. They are listed at the end of the Book of Reference and have been served notice of the Order proposals.
- 7.9 Schedule 13 of the draft Order makes provisions for the protection of the interests of drainage authorities and the Environment Agency. The form of the protective provisions found in Schedule 13 follows the form of equivalent protective provisions in other Network Rail Transport and Works Act Orders made by the Secretary of State.
- 7.10 Schedule 13 provides that for certain works authorised by the Order (defined as specified works), which include constructing or altering or repairing a structure in, over or under a main river which affects its flow or diverts flood waters or works which are within 16m of a drainage work or affect the flow of water to or from it, Network Rail must submit for approval plans and other details of those works to the Environment Agency.
- 7.11 The Environment Agency may impose reasonable requirements in approving the specified works and may request Network Rail, at its own expense, to construct protective works to protect drainage works from damage or to maintain its efficiency. The protective provisions allow the Environment Agency to watch and inspect the construction of the specified works and to require Network Rail to rebuild them if they are not constructed in accordance with the plans and requirements approved. Network Rail is obliged to keep the works in good repair so as to avoid any obstruction of a drainage work. The protective provisions also provide for indemnities to be given by Network Rail and make provision for a dispute resolution mechanism.
- 7.12 Although it had been possible to reach agreement on most matters relating to the protective provisions, one matter remains in dispute. The matter in dispute is whether, if time elapses under paragraph 2(3)(b) of draft Schedule 13 without a decision having been given by the Environment Agency, the submission by Network Rail for approval of plans and other particulars from the Environment Agency in relation to specified works (as defined) is deemed to be refused or deemed to be granted. The Agency is

seeking deemed refusal, and Network Rail, following the form of such protective provisions as made in other TWAOs, deemed approval.

- 7.13 It is acknowledged that the Environment Agency hopes that there will be no need for either refusal or consent to be deemed as the Environment Agency will endeavour wherever possible to make a decision within the timescale specified in the draft Schedule. Network Rail understands the Environment Agency's position to be that the Environment Agency is treating the plan approvals required under the protective provisions in paragraph 2(3)(b) as a consent akin to the Environmental Permitting (England and Wales) Regulations 2016 ('EPR') which should therefore retain the same scope as ; that is, that paragraph 2(3)(b) should deem refusal if a decision is not made in the appropriate timescale.
- 7.14 It is submitted that the protective provisions found in paragraph 2(3)(b) should remain as drafted as they 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 TWAO should proceed rests firmly with the Secretary of State in deciding 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 Environment 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 in any EU Directive which prohibits deemed approval in relation to flood risk activity which is the issue at which the EPR regime is targeted.
- 7.15 The purpose of the protective provisions is 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. Paragraph 4 (3)(a) of Schedule 8 to the Environment Agency's own Boston Barrier Order (2017) (made under the Transport and Works Act) provides for the Port of Boston's deemed plan approval of the Environment Agency's authorised works under similar terms to those found in the draft TWAO. The Boston Barrier Order post-dates the EPR.
- 7.16 The Environment Agency relies on the terms of Development Consent Orders (DCOs) under the Planning Act 2008. However, the position regarding disapplication of legislation under DCOs is different to that for TWAOs. If Network Rail were promoting a DCO, not a TWAO, it would require the consent of the Environment Agency to disapply these consents and would therefore be in a different position in negotiating protective provisions. The 1992 Act, 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.
- 7.17 Furthermore, in the recent decision on the application for the proposed Network Rail (Werrington Grade Separation) Order, where the EA raised similar points in relation to the draft protective provisions in that Order, the Secretary of State agreed with Network Rail's position regarding draft protective provisions and deemed approval. Paragraph 33 of the decision

states: *"The Secretary of State notes that a position of deemed refusal has been adopted in recent Development Consent Orders granted under the Planning Act 2008, as highlighted by the EA, but agrees with the Inspector that this is a significantly different legislative and regulatory process. For the reasons set out in IR 301, the Secretary of State agrees with the Inspector that the wording of the disputed protective provision clause should remain as proposed in the submitted draft Order."*

7.18 A protective provision for deemed approval is the form of provision the Secretary of State would expect to be included in a railway scheme and is consistent with the policy of the 1992 Act. If the Environment Agency'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.

7.19 For these reasons the Secretary of State should resist the Environment Agency's proposals for deemed refusal.

### **The Case for the Objector**

#### **Environment Agency (OBJ 172)**

7.20 It is hoped that there would be no need for either refusal or consent to be deemed; the Environment Agency will use its best endeavours wherever possible to make a decision in the relevant timescale. However, the issue is whether if a decision was not made in the timescale whether consent or refusal should be deemed.

7.21 Historically the protective provisions agreed by the Environment Agency in TWAOs provided for deemed consent. This reflected the legal position at the time under sections 109 – 110 of the Water Resources Act 1991. However, in 2016 the flood defence consenting regime was transferred to the regime which permits other types of environmental permit and flood defence works then became "flood risk activity" permits under EPR. Under the EPR if a decision on a permit application is not made within the relevant period the application is deemed refused.

7.22 The suggested protective provisions would replace the consenting / permitting regime operated by the Agency, the purpose of which is to protect against flood risk. Consequently, the protective provision in the draft Order should be for deemed refusal to be consistent with the EPR. Protective provisions are often agreed as part of DCOs made under the Planning Act 2008. Although made under different legislation, the principle of the Agency agreeing to 'disapply the legislation relating to its consenting / permitting regime in return for satisfactory protective provisions within DCOs is exactly the same. In the Thames Water Utilities (Thames Tideway Tunnel) Order 2014 deemed refusal was accepted as appropriate by the Secretary of State.

7.23 Since flood defence consents became flood risk activity permits under the EPR the Environment Agency has sought deemed refusal as a matter of



course in draft DCOs. Replication of the EPR regime within the draft Order is entirely reasonable and reflects the changed legislative landscape since 2016. There is no logical reason as to why the protective provisions should not reflect the regime under EPR. There is a dispute resolution procedure in the protective provisions should there be a deemed refusal which Network Rail could invoke if necessary.

- 7.24 As regards to DCO regime, the Environment Agency takes the view that it will seek protective provisions for its own benefit such that there may be one set of protective provisions for the Environment Agency and another set for Drainage Authorities; this happens regularly in Development Consent Orders and there is nothing awkward or difficult about such provisions being implemented.
- 7.25 There is no reason for a different approach being taken between TWAOs and DCO orders – the point in relation to deemed refusal / consent being the same in both regimes. The Environment Agency takes the stance in relation to DCOs that it will refuse disapplication of the EPR if an applicant will not agree to deemed refusal in a DCO. The protective provisions within a TWAO should reflect that in DCOs in relation to deemed refusal in order to ensure consistency.

### **Inspector's Conclusions on SOM5**

- 7.26 The Secretary of State has already concluded that an EIA is not required, and the impacts upon habitat and biodiversity of the Scheme is likely to be low due to the limited nature of the works envisaged. A Precautionary Method of Work is nonetheless in place should surveys prior to the implementation of the works reveal the presence of protected species. Proposed condition No. 4 makes adherence to the Precautionary Method of Work binding upon the Scheme.
- 7.27 The interests of statutory undertakers are protected under paragraphs 13(5) and 14(4) where specific provision is made for the retention of any rights which statutory undertakers may have for the maintenance of the apparatus in, over or under the land currently crossed by those public rights of way that are to be extinguished or diverted as a result of the Order coming into force.
- 7.28 As regards the dispute regarding the protective provisions set out in Schedule 13, both Network Rail and the Environment Agency cite examples of recent Orders having been made by the Secretary of State to support their respective positions and have made comprehensive submissions as to the legal framework in which deemed consent or deemed refusal should be considered. The submission made by Network Rail in regard of the recent Boston Barrier Order appears to me to be highly relevant in that an Order made under the 1992 Act procedure which post-dated the EPR regime contained a protective provision for deemed consent. My understanding is that deemed consent is the established precedent where there has been a failure by a party to make a determination on detailed plans submitted to the party who benefits from the protective provisions.

- 7.29 As Network Rail point out, the matters for which consent would be sought and for which consent would be deemed if no response was forthcoming within the specified timeframe, are matters of detail, in-principle consent for the Scheme having been granted by the making of the Order. Under Schedule 13, the Environment Agency would be asked to approve the detailed drawing produced by Network Rail in relation to the scheme proposals which impact upon the Environment Agency's interests where consent for the Scheme as a whole had already been granted.
- 7.30 As I understand it, the principle of deemed consent has been part of the protective provisions inserted in TWAOs since the commencement of the Act. The Boston Barrier Order cited by Network Rail is a recent example of that long-established principle. Although deemed refusal forms part of the DCO regime, such Orders are made under different legislation and different regulatory procedures.
- 7.31 If the terms of paragraph 2(3)(b) of Schedule 13 were amended in the manner contended for by the Environment Agency, it would render the provisions of paragraph 2(3)(a) (approval must not be unreasonably withheld) and 2(4) (use reasonable endeavours to respond to the submission in the relevant time period) redundant; deemed refusal would also potentially delay the implementation of the Scheme while Network Rail invoked the dispute resolution process.
- 7.32 As the purpose of the 1992 Act procedure is to grant in-principle approval for the delivery of the Scheme, the protective provisions are a mechanism whereby the detail of a Scheme which has already been approved can move forward in a timely fashion. In such circumstances, the Environment Agency should be expected to determine an application made to it on the detail of the works to be executed within the prescribed period and to avoid unnecessary delay.
- 7.33 I conclude that the proposed wording of paragraph 2(3)(b) of Schedule 13 to the draft Order does not require amendment.

**8. SOM6 Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the MHCLG 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”**

**whether there is a compelling case in the public interest for conferring on Network Rail powers compulsorily to acquire and use land and rights in land for the purposes of the Scheme;**

**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**

**The case for Network Rail**

- 8.1 Network Rail is willing to seek to acquire the temporary occupation or rights (including for access) in land by agreement but in order to provide suitable and convenient public rights of way which connect coherently to the existing PROW network, Network Rail has sought to compulsorily acquire the necessary land or rights in land. Network Rail has however limited the extent of the acquisition to only what is reasonably needed in order to construct the scheme.
- 8.2 It has therefore sought powers only to temporarily occupy land so as to create the new public rights of way and has not sought to acquire outright strips of private land which it does not need, and which would be wholly disproportionate given the nature of this scheme. Network Rail therefore considers that there is a compelling case in the public interest to acquire the necessary use and rights in land to enable the closure and downgrade of level crossings as set out in the proposed Order.
- 8.3 These powers being sought would guarantee that should the Order be made, all the land required for the Scheme can be acquired in a realistic timescale and that no individual landowner can hold up the Scheme through a refusal to sell or licence its interest. It would also ensure that no adverse interests prevent the Scheme being delivered.
- 8.4 In practice, it would be impossible to assemble all the necessary land interests in a reasonable timescale without the use of such compulsory powers.
- 8.5 The rights and powers sought through the Order are for the closure of level crossings subject to opening of new rights of way (Article 13); closure of level crossings without the provision of new rights of way (Article 14); the re-designation of highways (Article 12); and the creation and maintenance of new highways (Article 15). Articles 13 and 14 make provision for anyone who suffers loss in relation to the extinguishment of a private right over a crossing specified in Part 1 and Part 2 of Schedule 2 to claim compensation. Article 15 also applies the compensation provisions under section 28 of the 1980 Act to the new public rights of way, to allow those who wish to bring a claim to contact Network Rail. Articles 13 and 14 also make provision for the protection of the rights of statutory undertakers.

- 8.6 The permanent acquisition of land by compulsion is not pursued by the Order; the only plot of land within the ambit of the Scheme for which compulsory purchase may have been necessary has been acquired by Network Rail through negotiation.
- 8.7 The Order would authorise Network Rail to acquire new rights of access over the land detailed in Schedule 5. The purposes for which such rights may be acquired are for access, for access for the creation of a PROW, access for the removal of a level crossing and associated infrastructure, access for construction of the authorised work, or access for maintenance.
- 8.8 Although the acquisition in the Order is for a permanent right of access over land, except in those cases of access for maintenance and access to the railway, the rights required are, in effect, temporary, to be exercised only in relation to the works to close the level crossing, any extinguishment of existing public rights of way, and in relation to works to create the alternative public or private rights of way.
- 8.9 Powers are also sought to enter upon and take temporary possession of the land specified in Schedule 6 for use as a worksite during construction, to create the new public rights of way on the land including construction of any associated footbridges, creating any temporary accesses for removal of the level crossing, creation of the new PROW or construction of authorised works. The powers are time limited and the land must be returned to the landowner within twelve months of the completion of the works for which the land was taken.
- 8.10 Article 22 of the Order provides for the temporary use of any land within the limits shown in the Order plans if that land is reasonably required for the purpose of maintaining the authorised works and to construct any temporary works associated with that maintenance. These powers would be available for twelve months commencing upon the date that the work is opened for use. Network Rail will be responsible for the new public rights of way and related footbridges for the first twelve months after construction, after which the local highway authority takes responsibility.
- 8.11 The Order further provides for the extinguishment of private rights of way over those accommodation crossings listed at Article 25(2). These crossings are included separately in Article 25 because there are no public rights of way over them. Article 20 provides for the permanent acquisition of new vehicular rights of access for the benefit of certain land affected by the extinguishment of private rights over the crossings.
- 8.12 Article 26 clarifies that in relation to those crossings where public vehicular rights of way are to be extinguished, vehicular rights of access will be retained for certain users permitted by Network Rail. The Order would also grant powers to lop trees overhanging the works as set out in Article 30 of the Order and to enter onto private land for survey and investigation purposes as set out in Article 17 of the Order.
- 8.13 The Order also provides for certain works to alter or interfere with the existing highways; to temporarily stop up streets (Article 9); alter the

layout of streets (Article 7); to carry out other works in the street (Article 8) associated with the provision of alternative routes or the extinguishment of existing rights, including to provide new or extended footways or pedestrian refuges (traffic islands). Those streets affected by such works are identified in Schedules 7, 8 and 9. The Order also incorporates certain provisions of the NRSWA91 where works are required in the street or streets closed temporarily.

8.14 If approved the TWAO will grant powers to close certain level crossings, create new rights of way, construct works, downgrade the status of other crossings and related highways, take land on a temporary basis, impose rights on land, extinguish private access rights, grant private rights over certain crossings, undertake works affecting the highway and allow entry for survey and tree lopping purposes.

8.15 The powers and rights sought under the Order are all required to facilitate delivery of the Scheme.

*Compensation*

8.16 Where the Scheme would impact upon private land and rights the Order makes provision for compensation to be paid to affected landowners. The Order incorporates elements of the legislation which makes up the Compensation Code and provides for appropriate variations to that legislation as it applies to the present Order: in particular the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and the Land Acquisition Act 1981. The Compensation Code provides for proper compensation to be paid to those having land taken from them to facilitate schemes undertaken in the public interest.

8.17 The powers sought in the Order will enable Network Rail to take temporary possession of land or acquire new rights in land for access for the construction of the works, and to take permanent rights of access for third parties as a consequence of the closure or downgrade of a crossing upon service of appropriate notices. Although the powers sought would enable Network Rail to take possession without the landowner's consent if necessary, Network Rail is willing to reach agreement in advance of using compulsory purchase powers in accordance with the MHCLG Guidance; for example, such agreement has enabled E12 Wallaces to be removed from the Order.

8.18 Article 18 invokes Part 1 of the Compulsory Purchase Act 1965 which has the effect of requiring Network Rail to pay compensation to qualifying parties for the acquisition of new rights in land for access for construction of the works, or for rights of access for third parties. Compensation for temporary possession of land is addressed in Article 21(5) and Article 22(6).

8.19 All property owners who have rights imposed on their land under the Order will be entitled to claim compensation in accordance with the Code. In addition to compensation being paid for the value of land taken, compensation will also be payable in respect to any loss in a landowner's retained property caused by it being severed from the land acquired, or by

the Scheme itself. Compensation is also payable in respect to disturbance losses that result from the construction of the Scheme.

- 8.20 Schedule 12 of the Order provides, in paragraph 3(2) section 7 of the Compulsory Purchase Act 1965 (which sets out the compensation payable for severance of land) to be applied in a modified form in the case of acquisition of such new rights. Paragraph 3(2) sets out that the measure of compensation to be applied is not only the extent to which the value of the land has been depreciated by the acquisition of the new rights, but also to any damage sustained by the owner due to the taking of the right or injurious affection arising from the exercise of the powers in the Order.
- 8.21 In relation to land to be occupied temporarily under the powers in Article 21 and under Article 22 for maintenance of works, Network Rail must pay compensation for any loss or damage arising from the exercise of the powers in the Order. In all cases where land is required to be used by Network Rail on a temporary basis such land will be returned to the landowner within the time limits set out in Articles 21 and 22 with the land having been restored to the reasonable satisfaction of the owner.
- 8.22 Articles 9, 13, 14, 24 and 25 of the Order extinguish or suspend private rights and provide for affected landowners to claim compensation. Article 15(3) makes express provision for compensation to be paid for depreciation in the value of the interest in land or for damage suffered by being disturbed in the enjoyment of the land by applying the provisions of section 28 of the Highways Act 1980.
- 8.23 Although the TWAO provides Network Rail with powers to interfere with private land interests such interference is subject to the payment of compensation and the interference is kept to only that which is required to secure the purposes of the Order.

#### *Human Rights*

- 8.24 Article 1 of the First Protocol to the European Convention on Human Rights states that "Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".
- 8.25 Article 1 is a qualified right in that no one shall be deprived of his possessions "except in the public interest and subject to the conditions provided for by law".
- 8.26 The compulsory acquisition of land for the railway purposes specified in the TWAO is authorised by, and subject to, the 1992 Act. By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest for individuals to be deprived of their land for

railway purposes. The procedural safeguards are provided by the 1992 Act, The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and the Transport and Works (Inquiries Procedure) Rules 2004 which enable objections to be raised to compulsory acquisition and considered by an independent inspector. In addition, where land is authorised to be compulsorily purchased by the making of an Order under the 1992 Act, compensation will be payable under the compensation code, as applied by that order.

- 8.27 The Order is being pursued in the public interest, as is required by Article 1 of the First Protocol where compulsory acquisition of property is concerned. The public benefits associated which will flow from the implementation of the Scheme are sufficient to justify interfering with the human rights of the landowners proposed to be affected.
- 8.28 The TWAO, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public interest in securing the benefits of the Scheme to the national railway network. Therefore, the interference with Convention rights is justified.

### **Inspector's Conclusions**

- 8.29 I have set out above the reasons why I consider there to be a compelling case in the public interest in support of the scheme to justify conferring on Network Rail powers to compulsorily acquire and use land for the purposes of the scheme.
- 8.30 SOM8 indicates that the acquiring authority will need to be able to show that: all necessary funding is likely to be available within a reasonable timescale and that the scheme is unlikely to be blocked by any physical or legal impediments to implementation, including any need for consent.
- 8.31 During CP5 (2014 – 2019) Network Rail had access to ring-fenced funds provided by the National Level Crossing Risk Reduction Fund to finance the Scheme. CP5 ended in March 2019 and those ring-fenced funds cannot be carried over into CP6. Network Rail estimates the cost of the Scheme to be just under £5million and that the funding of the implementation of the Scheme during CP6 is to be drawn from the Operations, Maintenance and Signalling budget. The Secretary of State is to provide Network Rail with £34.7billion via the Network Grant during CP6. Although there are no specific funds ring-fenced for the implementation of the Scheme, a commitment to the Scheme during CP6 has been given by the Managing Director Anglia Region. Network Rail are of the view that the Scheme can be considered to be fully funded.
- 8.32 Although Network Rail has not been able to identify specific funding during CP6 for the implementation of the Scheme, I have not been provided with any evidence which demonstrates that the Scheme would not, or could not, be fully funded from the Operational, Maintenance and Signalling budget. It appears to me that the funding to implement the Scheme during CP6 would be available in a timely manner.

- 8.33 Network Rail seeks the compulsory acquisition powers to facilitate the works necessary to implement its crossing closure programme. The Scheme's Order Limits shown on the deposited plans have been designed to have the least impact upon private land and subject to the modifications proposed by Network Rail and other objectors, the acquisition of rights in land or to use land appear to be only what is necessary for the implementation of the Scheme. Given the extent of landowner objections to the creation of new public rights of way over their land demonstrated through the inquiry, I consider it unlikely that, without compulsory powers, Network Rail would be able to assemble all of the necessary land interests within a reasonable timescale to allow the Scheme to be delivered in a timely manner.
- 8.34 No evidence has been submitted to suggest that additional consents would be required which are not already provided for within the Order. There do not appear to be any impediments to the satisfactory implementation of the Scheme.



**9. SOM7 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 the Planning Practice Guidance Use of Conditions**

- 9.1 I discussed conditions at the inquiry with a representative of Network Rail, ECC, CBC and the Ramblers, and have considered the conditions in light of the tests set out in the PPG and the revised NPPF.
- 9.2 There was general agreement with regard to the proposed conditions although CBC requested the inclusion of an archaeological condition relating to works on specific plots affected by the proposed closure of E51 Thornfield Wood and E52 Golden Square.
- 9.3 CBC submitted that the projected work compounds for E51 and E52 were located within an area of undesignated heritage assets and there has been no investigation of the significance of these archaeological sites. Although Network Rail consider that any topsoil stripping of the site of the working compound was likely to be 100mm, topsoil stripping can often be deeper and CBC was of the view that the use of the land for a works compound would lead to compaction to any underlying archaeological remains either from the deposition of hardcore or from works traffic and facilities following removal of the topsoil.
- 9.4 CBC was of the view that there was a need for archaeological investigation during the development of the compound sites. If not relocated, these compounds should be constructed onto the surface without removal of any topsoil. However, if the construction compounds were to remain where currently proposed, and if topsoil stripping were to be required for their installation, the Borough Council submitted that an archaeological condition was required in relation to the proposed works to E51 and E52.
- 9.5 ECC submitted that the condition relating to working hours should include a prohibition on works in, to or affecting the highway except where the Highway Authority confirms that such works are required. Although Network Rail considered that such a condition may be overly restrictive, such a condition is required to prevent undue disturbance to local residents.
- 9.6 Discussion and consultation on the form of the revised conditions took place amongst the parties with agreement reached in relation to the conditions relating to archaeology and working hours.
- 9.7 I consider that the proposed conditions would be necessary, relevant to the development proposed in the Scheme, precise and enforceable and reasonable in all respects.
- 9.8 However, I have concluded in relation to E51 Thornfield Wood and E52 Golden Square that the proposed alternative routes would not provide suitable or convenient replacements for current users of the crossings. If my conclusions in respect of E51 and E52 are accepted by the Secretary of State, the revised condition 5 relating to archaeology sought by CBC would no longer be appropriate. A list of recommended conditions if the Secretary

of State were to omit E51 and E52 from the Order is attached at Appendix 10.

- 9.9 If the Secretary of State determines that E51 and E52 should be included in the Order, a list of relevant conditions is attached at Appendix 11.

## 10. SOM8 Network Rail's Proposals for funding the scheme

- 10.1 The anticipated final cost of implementing the Order scheme is £4.88m. This will be funded in Control Period 5 (CP5) by the National Level Crossing Risk Reduction Fund and Anglia Route signalling funding. In addition to this source of funds, Anglia Route will apply for further funding in CP6 to enable the implementation of works at level crossings after March 2019. The proposed works meet the criteria to enable Network Rail to make an application to the ORR in December 2017 for CP6 funding.
- 10.2 The authorised funds in CP5 and the applied for funds in CP6 will meet the capital cost of implementing the Order inclusive of compensation and any acquisition of blighted land as identified within section 149 of The Town and Country Planning Act 1990.
- 10.3 Control Period 6 (CP6) will begin on 1 April 2019. It is recognised that the ring-fenced funding from the National Level Crossing Risk Reduction Fund cannot roll over from CP5 into CP6. It is also recognised that the expected benefits arising from the Order are unlikely to be delivered within CP5 and that implementation of the Scheme in CP6 will have to come from other sources of funds.
- 10.4 The Strategic Business Plan for CP6 shows that Anglia Region is seeking £2,409m for Operations, Maintenance and Renewals. Unlike CP5 where there was a ring-fenced budget of £99m for level crossing reduction, it is not anticipated that such ring-fenced budgets will be available in CP6. Therefore, the costs of implementing the Order would fall to be met from Anglia Route's 'Operations, Maintenance and Renewals' allocation.
- 10.5 In October 2017, the Secretary of State published the Statement of Funds Available document for CP6<sup>318</sup> which sets out that the Department for Transport expects around £47.9 billion to be spent by Network Rail during CP6, £34.7 billion being provided by direct funding from Government in the form of the Network Grant. Commitment to the Anglia Region Level Crossing Reduction Strategy has been confirmed by the Route managing Director who also confirms that funding of the Scheme during CP6 will be derived from the funds set aside for operations, maintenance and renewals<sup>319</sup>.
- 10.6 Significant funding will be available during CP6 in respect of operations, maintenance and renewals to implement the Order and for the benefits which will flow from it to be realised. Network Rail remains committed to continuing its level crossing risk reduction work through CP6.

### Inspector's Conclusions on SOM8

- 10.7 The Scheme had been developed during CP5 utilising funds which were specifically ring fenced for those projects which sought to reduce the

---

<sup>318</sup> NR28/5.1 tab 1

<sup>319</sup> NR28/5.1 tab 3

number of railway crossings across the railway network. Whilst the inquiry commenced within CP5, the adjournment arising from errors in Network Rail's land referencing exercise resulted in the inquiry closing in the last few months of CP5. As Network Rail have acknowledged, the ring-fenced funding made available through the National Level Crossing Risk Reduction Fund cannot be carried forward into CP6 to implement the Order if made.

- 10.8 Implementation and delivery of the Scheme is therefore dependent upon other sources of funding. The Secretary of State's Statement of Funds Available for CP6 includes a grant of £34.7 billion to Network Rail for its operations with Network Rail being expected to generate £13 billion itself for investment in the network.
- 10.9 The Managing Director of Anglia Region has confirmed its commitment to delivering the Scheme utilising funds from the operations, maintenance and renewals budget. Although there will no doubt be other calls on this budget through CP6, and that funds cannot be guaranteed in the same way that ring-fenced funds can be guaranteed, there does not appear to be any impediment to Anglia Region being able to fully fund the Scheme within CP6.

**11. SOM9 Whether the statutory procedural requirements have been complied with**

- 11.1 On the opening day of the inquiry, Network Rail (as the promoter of the Scheme) submitted a Compliance Bundle<sup>320</sup> to demonstrate that it had complied with its obligations under the Transport and Works (Inquiries Procedure) Rules 2004.
- 11.2 An audit of the original Book of Reference undertaken by Network Rail revealed that a number of parties with an interest in land affected by the Order had not been served with the required statutory notices. This situation came to light on the third day of the inquiry and necessitated an adjournment for notice to be served and to give new parties 42 days in which to respond.
- 11.3 In consequence of the audit of the Book of Reference which Network Rail had undertaken, and the necessity to serve additional notices on both new and existing parties as set out above, a revised Compliance Bundle<sup>321</sup> was submitted when the inquiry resumed on Tuesday 25 September 2018.
- 11.4 A revised Book of Reference has been submitted following the service of additional notices together with confirmation from Network Rail that all procedural requirements have been fulfilled<sup>322</sup>.
- 11.5 I am satisfied that there are no procedural matters outstanding which require addressing.

---

<sup>320</sup> NR 102

<sup>321</sup> NR 110(2)

<sup>322</sup> NR 110(1)

## 12. Proposed Modifications

### **Matters raised in relation to Article 13 and 14 of the draft Order by the Ramblers**

- 12.1 Article 13 of the Order provides a "locking mechanism", which bites on those level crossings where closure is dependent on the provision of an alternative route that includes the provision of new highway. The impact of Article 13(3) of the draft Order is that closure of the crossings will not have effect until the new highway has been constructed and completed to the satisfaction of the highway authority and is open for use.
- 12.2 Article 13(3) requires the provision of particular stretches of new highway to be satisfactorily constructed before the relevant crossing can be closed. Whilst this locking mechanism was welcomed, concern was expressed that no such locking mechanism was present in Article 14 which related to those crossings where no new highway was to be provided but where Network Rail proposed to undertake works to improve the existing highways. Particular concern was expressed that E43 High Elm and E54 Bures could be closed before the proposed improvement works to the existing highway had been carried out. It was suggested that a similar "locking mechanism" should be included in Article 14.
- 12.3 The Article 13 "locking mechanism" was limited in its scope as it only refers to the provision of a new highway set out in column (4) of part 1 to Schedule 2. However, in some cases Network Rail was proposing to not only provide a new highway but also to undertake additional works on existing highways such as safety mitigation works, improvements to drainage or changes to existing infrastructure. In such cases, there was no "locking mechanism" which would ensure that the entire "package deal" would be delivered; it was submitted that such a mechanism was required.
- 12.4 Concerns were also raised about the drafting of Article 13 and its reliance on the certification procedure in Article 15 and the 'deemed certification' procedure set out in Article 15 whereby certification can be deemed to have been granted if the highway authority failed to reply to a request for certification within 28 days of that request. The deemed certification provision was strongly opposed as the highway authority may be put in the position where a large number of requests are made and to which it is unable to respond within the 28-day period.
- 12.5 Although it was appreciated that ECC had entered into a side agreement with Network Rail<sup>323</sup> that deals with arrangements for certification of the works, however, due to the confidentiality of that agreement, the Ramblers do not derive any comfort from it. What is more, similar side agreements do not appear to have been signed with the other highway authorities affected by this Order.

---

<sup>323</sup> NR 118

- 12.6 The Ramblers also submit that, that third parties, such as interested members of the public or user group representatives are entirely left out of any post-Order certification process with the highway authorities. There can be no guarantee that the highway authorities will, in fact, require the provision of all the proposed "package deal" elements before a particular crossing can be closed.
- 12.7 Although assurance may have been given that drainage issues identified in relation to a particular path would be addressed, however if it is subsequently decided by the Highway Authority and Network Rail that no such measures are necessary, it appears to be open to the Highway Authority to still certify the route, enabling the crossing to be closed. If interested parties disagreed, they would have limited opportunity to challenge that decision as Network Rail and the Highway Authority would have acted within the powers of the Order.
- 12.8 Although Stage 1 RSAs had been conducted by Network Rail reliance had been placed by it on the fact that further RSA work (including Stage 2 RSAs) would need to be carried out (with the appropriate oversight of the relevant Highway Authorities) before crossings (that involve an interface with the road network) can be closed. The Ramblers are unaware of how this process would be guaranteed by the Order.
- 12.9 It is understood that Network Rail has agreed to pay commuted sums to the highway authorities for the continued maintenance of the alternative routes to ensure those routes are safe for pedestrian use. However, maintenance obligations are not always adhered to by public bodies and often requires the intervention of third parties using the available legislation. The Order does not guarantee that such commuted sums would be paid or that such sums would be ring fenced for the maintenance of the new routes within the highway authorities' budgets.
- 12.10 The Order does not appear to require new rights of way to be shown on the Definitive Map and Statement. Nor are specific widths and OS grid references provided for new stretches of ROW to allow interested parties to check any later Legal Event Modification Orders that might be made by the surveying authorities to add the new ROWs to the Definitive Map and Statement.
- 12.11 It was suggested that the provisions of the arbitration clause in Article 37 of the Order, was appropriate in the specific context of the Order proposals. Although it was acknowledged that the clause mirrors that taken from the Transport and Works (Model Clauses for Railways and Tramways) Order Regulations 2006, it should be modified to reflect the particular focus of this Order (in closing and diverting rights of way). The Ramblers requested that Article 37 should be re-worded to specify that, if agreement on a single arbitrator cannot be reached, any arbitrator should be an independent member of the Institute of Public Rights of Way and Access Management (IPROW) appointed by the President of IPROW.

## **The response by Network Rail**

- 12.12 A side agreement has been entered into between Network Rail and ECC as set out in the joint statement<sup>324</sup>. As set out in the penultimate paragraph in that joint statement, "*To address particular concerns raised by the Council the agreement includes a requirement for the approval and construction of any works altering the existing highway to be undertaken before the related crossing can be closed*". This was considered to provide a sufficient safeguard to address the concerns expressed with regard to the lack of a "locking mechanism" in Article 14. The side agreement with ECC was considered sufficient as there were no proposed works to existing highways in relation to crossings included in Part 2 of Schedule 2 in the other highway authority areas.
- 12.13 The works envisaged to be undertaken on existing highways are subject to Articles 7, 9 and 10 of the Order which require any such works to be carried out to the reasonable satisfaction of the Highway Authority. It is not, therefore the case that there is no highway authority oversight in respect of works to existing highways which are involved in implementing the Order proposals.
- 12.14 As to the concern raised that works to the existing highway are not caught within the certification provisions of Article 15, those crossings within the highway area of ECC are covered by the provisions of the side agreement already made. As regards works such the construction of steps to provide access to a road such as at HA03/HA04, such works are part and parcel of the creation of the new highway and will fall within the certification requirements of Articles 13 and 15.
- 12.15 Without prejudice to that position, however, the words "and such other alterations to existing highways authorised by this order as agreed with the highway authority" could be inserted into Article 13(3) to address to concerns raised by the Ramblers.
- 12.16 The joint statement between ECC and Network Rail sets out that the side agreement includes arrangements for agreeing the design and approval of the works authorised by the Order in respect of each crossing, including submission of a Schedule of Works for each crossing by Network Rail for approval by the Council as well as to certification. The other highway authorities (which, individually, do not have more than 4 crossings whose closure is subject to certification under Article 15) have not raised any concerns in respect of the proposed 'deemed consent' provisions. The concern about a highway authority "receiving a large number of certification requests all at the same time" and not being able to respond within the 28 days simply does not arise. The 'deemed consent' provision has in any case precedent in other recent TWAOs.
- 12.17 It should be assumed that the Highway Authority will act reasonably, in the proper exercise of its functions, to certify the works to their reasonable

---

<sup>324</sup> NR 118



satisfaction. Although NR 118 identifies that agreement covers payments for commuted sums, it would not be in the interests of a highway authority to certify or allow a deemed certification which does not address particular issues such as drainage, since the ongoing obligation to maintain works after the first year would fall on the highway authority.

- 12.18 It is acknowledged that the requirement to undertake further RSAs is not guaranteed by the Order. However, it would not be appropriate to include in the Order details of arrangements concerning the exercise of the powers granted under it. Such matters can properly be left to agreements made with the relevant highway authority, including through a legally binding agreement enforceable through the courts. Such agreement has already been entered into with ECC which includes arrangements for agreeing the design and approval of the works authorised by the Order in respect of each crossing, including submission of a Schedule of Works for each crossing by Network Rail for approval by the Council.
- 12.19 Similarly, it is not for the Order to make provision for the payment of commuted sums or 'ring fencing' of the same. The side agreement sets out that commuted sums are to be paid and includes the scope of such payments and how they are to be calculated. Similar arrangements could be entered into with the other highway authorities, if those authorities request the payment of commuted sums. There is also no basis for suggesting that provisions in the Order are necessary to secure the safeguarding, and future use of those sums.
- 12.20 The recording of any new PROW in the definitive map and statement is an administrative matter for the Surveying Authority. It is not agreed that Article 37 requires amendment. The model clause on which Clause 37 is based does not require the President of the Institution of Civil Engineers to appoint a civil engineer as arbitrator: merely provides that it is for the President to appoint an appropriate arbitrator. The Order does not specify that this is to be an engineer, and NR would resist a suggestion that the clause should specify a professional membership body from which the arbitrator would be drawn.

### **Essex County Council**

- 12.21 ECC was content with the terms of the side agreement it had entered into with Network Rail with regard to commuted sums and the certification regime. ECC would not object to the suggested modification of Article 13 as it would provide transparency. ECC also agreed that a "locking mechanism" was required in Article 14 with regard to E43 and E54 to prevent the closure of the crossings before the required works to the highway had been completed.

### **Inspector's Conclusions**

- 12.22 Network Rail was initially of the view that there was no requirement for Article 14 to be amended to include a "locking mechanism" of the kind set out in Article 13. Network Rail was of the view that the time difference between the 'legal' closure of the crossing under Article 14 and the

'physical' closure following necessary works to the highway to bring the alternative route up to the required standard would not prevent users from accessing the railway crossing as it could remain open until such time as the works had been approved.

- 12.23 Following further debate and argument, Network Rail accepted that the time delay was significant and that any use by the public of a crossing that had been legally but not physically extinguished would be a criminal trespass, and that the enablement of such trespass was contrary to the terms of Network Rail's operating Licence. Consequently, it was accepted that Article 14 should be modified by the addition of a provision which prevented the closure of E43 and E54 until the necessary works had been approved by the highway authority. This amendment is set out as Article 14(5) in the revised filled up draft order dated 13 February 2019<sup>325</sup>.
- 12.24 However, as I have concluded that the proposed alternative routes for E43 High Elm (Section 5.32 above) and E54 Bures (Section 5.38 above) do not provide suitable and convenient alternatives for current users of these crossings, Article 14(5) of the revised draft Order would become redundant if the Secretary of State were to accept my recommendations. Should the Order be made with E43 and E54 being omitted, the Secretary of State should delete Article 14(5) as regards E43 and E54 from the revised draft Order.
- 12.25 The concerns of the Ramblers regarding the limited scope of the "locking mechanism" in Article 13 are recognised and as drafted would not encompass additional works to existing highways which are ancillary to the provision of new highways. I consider that Article 13(3) should be modified using the wording suggested by Network Rail.
- 12.26 The principle of deemed consent has been part of the protective provisions inserted in Transport and Works Act Orders since the commencement of the Act. In relation to Article 15, 'deemed certification' can be read as 'deemed consent'. The possibility that the Highway Authority may receive a large number of requests for certification and may not be able to respond in time was raised by ECC at the outset of the inquiry; the side agreement has made provision which has addressed those concerns. For ECC, Miss Velati confirmed that ECC was satisfied by the terms of the side agreement. I do not consider that Article 15 requires further modification.
- 12.27 Similarly, I am not persuaded by the concerns raised by the Ramblers with regard to the issues of commuted sums, the ring fencing of such sums or that the Highway Authority is in some way unable to manage its affairs without direction being given within the Order. The purpose of the Order is to authorise works which interfere with public rights of way and to provide powers for compulsory acquisition of interests in land including interference with private rights.

---

<sup>325</sup> NR 190

- 12.28 The Order need only provide the powers necessary to authorise, construct and maintain those works and does not need to include arrangements within it to ensure that those matters which will be the subject of detailed design and which will be developed in conjunction with the relevant Highway Authorities. Furthermore, it is for the Highway Authority to determine what is an appropriate use of public funds with regard to its responsibilities under the 1980 Act.
- 12.29 As Network Rail point out, the future recording of public rights of way affected by the Order will be an administrative matter for the surveying authority charged with keeping the Definitive Map and Statement up to date. This is not a purpose of the TWAO. As to arbitration, Article 37 requires the parties to agree on a 'single arbitrator' or for such individual to be appointed. As this is a TWAO, it is appropriate that the model clause has been followed.

### **Order modifications proposed by Network Rail**

- 12.30 During the inquiry, Network rail promoted a number of modifications to the draft Order, Schedules, Book of Reference and Deposited Plans. Those modifications are explained below.
- 12.31 NR 127 describes necessary amendments identified by NR since the submission of the application for the Order, related to: modifications as a consequence of legislative changes; the reduction in the scope of the Order arising from the withdrawal of E42 Sand Pit, E57 Wivenhoe Park and H03 Slipe Lane; changes to the P points shown on the deposited plans due to projection errors; changes to the proposed alternative routes arising from discussions with landowners in respect of E05 Fullers End, E08 Henham and E20 Snivellers.
- 12.32 NR 169 describes further amendments identified by Network Rail related to: changes to the proposed alternative routes arising from discussions with landowners in respect of E06 Elsenham Emergency Hut and E48 Wheatsheaf; and to make minor corrections to Schedule 2 and Schedule 6.
- 12.33 NR 190 describes further amendments identified by Network Rail which related to: the reduction in the scope of the Order arising from the withdrawal of E12 Wallaces following agreement between Network Rail and the Audley End Estate for the closure of the private crossing by agreement; amendments to Schedule 8 and Schedule 9 arising from the projected works on Ironwell Lane in connection with the closure of E26 Barbara Close already having been undertaken; amendments to Article 14 following agreement between the parties; and minor typographical corrections to Article 13 (2).
- 12.34 Modifications were made to the Book of Reference following the audit carried out by Network Rail which led to the adjournment of the inquiry in October 2017. Following the service of notice on further interested parties, a revised Book of Reference was produced. The original Book of Reference is NR09; the revised Book of Reference (with tracked changes) is NR109 (2); the clean copy of the revised Book of Reference is NR109 (1).

- 12.35 The final version of the draft order is NR 190.
- 12.36 With regard to the proposed modifications to the proposed alternative routes for E05 Fullers End, E06 Elsenham Emergency Hut, E08 Henham, E20 Snivellers and E48 W heatsheaf, Network Rail has consulted on those proposed changes in accordance with the procedure set out in NR104. These proposed changes have been discussed during the course of the inquiry, are minor in nature, have the agreement of the affected landowners and interested parties have had the opportunity to make representations on the proposals.
- 12.37 I conclude that the proposed modifications to the draft Order, the Order plans and the Book of Reference, are not substantial in nature and would be unlikely to prejudice the interests of anyone.

### **Order modifications proposed by other parties**

- 12.38 Minor modifications to the alignment of the proposed alternative routes for E37 Essex Way and H04 Tednambury were proposed during the course of the inquiry by the affected landowners. The landowners concerned undertook a consultation exercise with interested parties in accordance with the procedure adopted by Network Rail in relation to its own requested modifications as set out in NR 104.
- 12.39 Network Rail does not seek these modifications itself and has set out its views on those proposals as part of its case in relation to E37 Essex Way and H04 Tednambury. However, NR 188 describes the changes that would likely need to be made to Schedules 2 and 5 if the modifications pursued by the objectors to the draft Order were to be recommended to the Secretary of State. Should my conclusions and recommendations on E37 (Section 5.29 above) and H04 (Section 5.42 above) be accepted, Schedules 2 and 5 would only require modification in relation to H04.
- 12.40 As is the case with the modifications proposed by Network Rail, the proposed changes have been discussed during the course of the inquiry, affect only land in the ownership of the objectors, are minor in nature and are unlikely to prejudice the interests of anyone.

### **13. SOM 10 Any other matters which may be raised at the inquiry**

- 13.1 No other matters were raised at the inquiry which have not been addressed elsewhere in this report.

## 14. Recommendations

- 14.1 In view of the above findings and taking into account all the matters before the inquiry I consider that the Secretary of State can be satisfied that the case for making this Order has been shown and that making the Order would be justified under s1 of TWA.
- 14.2 The Scheme proposed by Network Rail accords with national and local policy and whilst there would be an impact upon users of the PROWs which currently cross the railway at grade, the proposed alternative routes would, in all the cases recommended for confirmation, provide suitable and convenient grade-separated routes by which the railway can be crossed and therefore satisfies the tests in s5(6) of TWA.
- 14.3 However, in relation to a number of the proposals put forward by Network Rail, the proposed alternatives would not provide suitable and convenient alternatives for current users of the crossings and should not be included in the final made Order. For ease of reference a tabulated summary of the conclusions reached in section 5 of this Report is set out below.

Crossing number	Crossing name	Recommendation	
		Include	Do not include
E01	Old Lane	Include	
E02	Camps	Include	
E04	Parndon Mill	Include	
E05	Fullers End		Do not include
E06	Elsenham Emergency Hut	Include with modifications	
E07	Ugley Lane	Include	
E08	Henham	Include with modifications	
E09	Elephant	Include	
E10	Dixies		Do not include
E11	Windmills	Include	
E13	Littlebury Gate House		Do not include
E15	Margaretting	Include	
E16	Maldon Road	Include	
E17	Boreham		Do not include
E18	Noakes		Do not include
E19	Potters		Do not include
E20	Snivellers	Include with modifications	
E21	Hill House 1	Include	
E22	Great Domsey	Include	
E23	Long Green	Include	
E25	Church 2	Include	

E26	Barbara Close	Include with modifications	
E28	Whipps Farmers	Include	
E29	Brown & Tawse		Do not include
E30	Ferry	Include	
E31	Brickyard Farm	Include	
E32	Woodgrange Close		Do not include
E33	Motorbike		Do not include
E35	Cranes No. 1	Include	
E36	Cranes No. 2	Include	
E37	Essex Way		Do not include
E38	Battlesbridge		Do not include
E41	Paget		Do not include
E43	High Elm		Do not include
E45	Great Bentley Station	Include	
E46	Lords No. 1	Include	
E47	Bluehouse	Include	
E48	Wheatsheaf	Include with modifications	
E49	Maria Street	Include	
E51	Thornfield Wood		Do not include
E52	Golden Square		Do not include
E54	Bures		Do not include
E56	Abbotts	Include	
H01	Trinity Lane	Include	
H02	Cadmore Lane	Include	
H04	Tednambury	Include with modifications	
H05	Pattens		Do not include
H06	Gilston	Include	
H08	Johnsons	Include	
H09	Fowlers		Do not include
HA01	Butts Lane	Include	
HA02	Woodhall Crescent	Include	
HA03	Manor Farm		Do not include
HA04	Eve's		Do not include
T01	No. 131	Include	
T04	Jefferies		Do not include
T05	Howells Farm	Include	

14.4 I recommend that the Order be made subject to the appropriate modifications as set out in the draft Filled-Up Order<sup>326</sup> and the following further modifications:

<sup>326</sup> NR/190 dated 13 February 2019

In Part 1 Preliminary in relation to "Disapplication of legislative provisions"

- Delete text of sub-paragraph 4(2)(a)(ii) "*Motorbike in the District of Basildon, County of Essex*"; delete text of subparagraph 4(2)(a)(iv) "*Jefferies in Thurrock*";
- delete text of subparagraph 4(2)(c) "the Network Rail Fullers End Level Crossing Order 2003"; delete text of subparagraph 4(2)(d) "the Network Rail Fullers End (Variation) Level Crossing Order 2005";

In Part 2 Crossings – in relation to Article 14 "Closure of level crossings"

- delete text of Article 14(5) "*Paragraphs (1) and (2) are not to have effect until, in respect of: (a) High Elm crossing and (B) Bures crossing listed in that Part of that Schedule, such alterations to existing highway authorised by this Order as agreed with the highway authority has been constructed and completed within Order limits to the reasonable satisfaction of the highway authority in accordance with article 15 (creation and maintenance of new highway) and is open for use.*"

In Part 2 Crossings – in relation to Article 25 "Extinguishment of private rights over accommodation crossings"

- delete text of Article 25(2)(b) "*Fowlers crossing between points P056 and P057 in the parish of Thorley, District of East Hertfordshire, County of Hertfordshire*";

In Schedule 1 "Scheduled Works",

- delete "*Borough of Colchester Parish of Wivenhoe Work No. 4 – A footbridge, commencing at a point 178 metres south-east of the junction of Queen's Road with the High Street and terminating at a point 5 metres east of its commencement.*"

delete "*Thurrock Work No. 5 – A footbridge, commencing at a point 225 metres south-west of the bridge carrying The Manorway over the Grays to Pitsea railway and terminating at a point 3.5 metres north-east of its commencement.*"

In Schedule 2 Part 1 Closure of Level Crossings Subject to Opening of New Highway:

- Tednambury: in column 3, delete "P039A" and insert "P039B"; in column 3, amend "Path not on definitive map between points P037, P041, P039 and P039A" to read "Path not on definitive map between points P037, P041, P039, P039A and P039B"; in column 4, between "P047" and "P040" insert "P039, P039A";
- Pattens: delete "*Pattens between points P049 and P050 and*"; "*Footpath 022 (Thorley) between points P048, P049, P050 and P051*"; in column 4 "*Status and extent of new highway*", delete "*Footpath between points P048, P052, P053 and P060A, between points P052 and P055 and between points P051, P054 and P053*" and insert "*Footpath between points P060A, P053, P052 and P055*";

- Fullers End: delete "County of Essex, District of Uttlesford Parish of Elsenham", "Fullers End between points P073 and P074"; "Footpath EX/13/29 (Elsenham) between points P079 and P080" "Path not on definitive map between points P073 and P074" "Path not on definitive map between points P082 and P079"; and "Footpath between points P075, P076, P077, P078 and P079 and between points P080, P082 and P078";
- Littlebury Gate House: delete "Parish of Littlebury", "Littlebury Gate House between points P137 and P138", "Footpath EX/31/30 (Littlebury) between points P137 and P138 Byway Open to All Traffic EX/31/3 (Littlebury) between points P138 and P138A", "Footpath between points P141, P142, P143 and P138A Footpath between points P144 and P145";
- Boreham, Noakes: delete "Parish of Boreham", "Boreham between points P158 and P159 and Noakes between points P163 and P164", "Bridleway EX/213/23 (Boreham) between points P158, P159 and P160", "Footpath EX/213/24 (Boreham) between points P163, P164, P165 and P166", "Path not on definitive map between points P163, P167, P165, P166 and P162", "Bridleway between points P160, P161 and P162";
- Essex Way: delete "Parishes of White Notley and Cressing", "Essex Way between points P181A and P182A", "Footpath EX/120/13 (White Notley) between points P179A, P181A, P182A, P183A and P184A", "Path not on definitive map between points P183A and P184A", "Footpath between points P179A, P185, P186, P187, P188, P189 and P184A";
- Potters: delete "Parish of Rivenhall", "Potters between points P193 and P194", "Footpath EX/105/43 (Rivenhall) between points P192, P193, P194 and P195", "Footpath between points P192, P196, P197, P198 and P199";
- Thornfield Wood, Golden Square; delete "Parishes of Wakes Colne and Mount Bures", "Thornfield Wood between points P237 and P238", "Golden Square between points P246 and P247", "Footpath EX/152/11 (Wakes Colne) between points P236, P237, P238 and P239", "Footpath EX/146/21 (Mount Bures) between points P245, P246 and P247", "Footpath EX/152/8 (Wakes Colne) between points P247, P250 and P24", "Footpath EX/152/7 (Wakes Colne) between points P251, P258 and P252", "Footpath between points P236, P241 and P242", "Footpath between points P239, P243 and P244", "Footpath between points P248 and P249", "Footpath between points P251 and P253", "Footpath between points P253 and P254", "Footpath between points P253, P255, P256 and P257";
- Wheatsheaf: in column 3 delete "P281, P282 and P283";
- Paget: delete "Borough of Colchester Parish of Wivenhoe", "Paget between points P293 and P293A", "Path not on definitive map



*between points P292, P293, P293A and P294", "Footpath between points P292, P293 and P295";*

- Manor Farm, Eve's: delete *"London Borough of Havering and Thurrock", "Eve's between points P346 and P347 and Manor Farm between points P358 and P359", "Footpath 252 (Havering) between points P344, P345, P346, P347 and P348", "Path not on definitive map between points P345, P356, P357 and P348", "Footpath 251 (Havering) between points P354, P358, P359 and P360", "Path not on definitive map between points P358, P365 and P360", "Footpath between points P350, P351 and P352", "Footpath between points P352A and P353", "Footpath between points P354, P361 and P362", "Footpath between P363 and P364";*
- Brown and Tawse: delete *"County of Essex, Borough of Brentwood Parish of West Horndon and Thurrock", "Brown and Tawse between points P386 and P391", "Footpath EX/313/39 (West Horndon) between points P391, P386 and P387", "Footpath 4 (Thurrock) between points P391 and P392", "Footpath between points P387 and P388A", "Footpath between points P388, P389 and P390", "Footpath between points P392 and P393";*
- Jefferies: delete *"Jeffries between points P395 and P396", "Footpath 32 (Thurrock) between points P394, P395, P396 and P397", "Footpath between points P394, P398 and P399", "Footpath between points P397, P401, P403, and P405", "Footpath between points P401 and P402";*
- Motorbike: delete: *"County of Essex District of Basildon", "Motorbike between points P146 and P417", "Footpath EX/279/136 (Basildon) between points P415, P416, P417 and P418", "Footpath between points P415, P419, P420 and P421";*
- Battlesbridge: delete *"City of Chelmsford Parish of Rettendon", "Battlesbridge between points P432 and P433", "Footpath EX/229/23 (Rettendon) between points P432, P433 and P434", "Footpath between points P432, P435, P436 and P437", "Footpath between P438, P439, P440 and P434";*
- In Schedule 2, part 2 Closure of level crossings Not Subject to Opening of New Highway:
  - Dixies: delete *"District of Uttlesford Parish of Newport", "Dixies between point P121 and P122", "Footpath EX/41/7 (Newport) between points P120, P121, P122 and P123";*
  - Bures: delete *"Parish of Bures Hamlet", "Bures between point P261 and P260", "Footpath EX/70/30 (Bures Hamlet) between points P259, P260, P261 and P262";*

- High Elm: delete "*Parish of Alresford*", "*High Elm between points P309 and P310*", "*Footpath EX/157/4 (Alresford) between points P308, P309, P310 and P311*";
- Woodgrange Close: delete: "*Borough of Southend-on-Sea*", "*Woodgrange Close between points P449 and P450*", "*Footpath 189 (Southend-on-Sea) between points P447, p448, P449, P450 and P451*";
- In Schedule 3 Land in which Private Rights of access may be acquired:
  - Delete text "*Over plot 32 in the parish of Thorley on sheet 09*", "*Land cross-hatched on sheet 09*", "*Vehicular access*";
- In Schedule 4 Re-designation of Highways:
  - Delete "*County of Essex District of Uttlesford Parish of Littlebury*", "*Byway Open to All Traffic EX/31/3 (Littlebury) between points R005 and P138A*", "*Byway Open to All Traffic*", "*Footpath*";
  - Delete "*City of Chelmsford Parish of Boreham*", "*Footpath EX/213/24 (Boreham) between points R006 and P162*", "*Footpath*", "*Bridleway*";
- In Schedule 5 Land in which only new rights etc., may be acquired:
  - Parish of Thorley: delete "*06, 07, 18, 10*", "*Access for removal of Level Crossing*", "*Creation of public right of way*", "*Access for removal of Level Crossing*", "*Access for construction of the authorised works*";
  - Delete "*District of Uttlesford Parish of Newport*", "*33*", "*Access for removal of Level Crossing*";
  - Delete "*Parish of Rettendon*", "*02,04A,06,07, 08*", "*Access for removal of Level Crossing*", "*Access for creation of public right of way*";
  - Delete "*Parish of Boreham*", "*01, 02A, 02B, 12, 12A*", "*Access for creation of public right of way*", "*Access for removal of level crossing*";
  - Delete "*Parish of Rivenhall*", "*06, 07, 19, 20*", "*Access for creation of public right of way*", "*Access for removal of Level crossing*", "*Access for removal of Level Crossing*";
  - Delete "*Parish of Alresford*", "*13*", "*Access for removal of Level Crossing*";
  - Delete "*Borough of Brentwood Parish of West Horndon*" "*09, 10, 11*", "*Access for removal of Level Crossing*";

- Delete text *"District of Basildon", "08, 14, 15, 19, 21", "Access for removal of Level Crossing", "Access for creation of public right of way"*;
- District of Thurrock: delete *"24, 64", "69, 70, 71", "Access for removal of crossing and access for maintenance"*;
- London Borough of Havering: delete *"04, 04A, 05", "09", "Access for maintenance", "Access for creation of public right of way"*;
- Delete text *"Borough of Southend-on-Sea", "01, 02, 04, 05", "Access for removal of crossing", "Access for maintenance"*;
- In Schedule 6 Land of which temporary possession may be taken:
  - Parish of Thorley: delete text *"13, 14, 18A, 18B, 27, 28, 31", "29, 30", "Access for creation of a public right of way", "11, 15, 33, 34"*;
  - District of Uttlesford Parish of Elsenham: delete *"05, 06, 12", "Worksite and creation of public right of way", "01, 02, 03, 04, 13"*;
  - Parish of Newport: delete *"30, 31"*;
  - Delete *"Parish of Littlebury", "01, 05, 06" "Worksite", "03, 11", "Creation of public right of way", "02, 04", "Worksite and creation of public right of way"*;
  - Delete *"Parish of Rettendon", "20, 21, 22, 10, 15A, 17, 16, 18, 03, 04, 05, 12A", "Worksite", "Worksite and creation of public right of way", "Creation of public right of way", "Access for creation of public right of way"*;
  - Delete *"Parish of Boreham", "04, 15, 17, 02", "Worksite", "Creation of public right of way"*;
  - District of Braintree Parish of Cressing: Delete *"24", "Access for removal of Level Crossing and creation of public right of way"*;
  - Parish of White Notley: Delete text *"21, 20, 21B, 21C, 13, 14, 14A, 22, 22A", "Creation of public right of way", "Access for removal of Level Crossing and creation of public right of way"*;
  - Delete *"Parish of Rivenhall", "03, 10, 10A, 16, 17, 18, 04, 05", "Worksite", "Access for removal of Level Crossing", "Creation of public right of way"*;
  - Delete *"Parish of Mount Bures", "01, 11, 02, 05, 06, 12, 13", "Creation of public right of way", "Worksite", "Access for removal of Level Crossing", "Access for creation of public right of way"*;
  - Delete *"Parish of Wakes Colne", "01, 08, 16, 03, 04, 05, 06, 09A, 13, 15, 18, 20, 09, 14", "Worksite", "Creation of public right of way"*;

*"Access for removal of Level Crossing, access for creation of public right of way and creation of new public right of way";*

- Delete *"Parish of Wivenhoe", "28, 33, 34, 30, 32, 35", "Worksite", "Worksite and creation of public right of way", "Footbridge";*
- Delete *"Parish of Alresford", "08, 09, 10, 12, 14", "Worksite";*
- Delete *"Borough of Brentwood Parish of West Horndon", "01, 08, 02, 04, 06, 05", "Worksite", "Creation of public right of way", "Worksite and creation of public right of way";*
- Delete *"District of Basildon", "01, 06, 10, 11, 12, 13, 18, 03, 16, 17, 22, 07, 09", "Worksite", "Creation of public right of way", "Access for removal of crossing";*
- Thurrock: Delete *"67, 27, 38, 40, 41, 44, 45, 46, 47, 48, 50, 50A, 61A, 64, 53, 53A, 54, 59, 61, 63, 26, 68, 25, 26A, 42, 43, 49, 51, 52", "Access for removal of Level Crossing and creation of public right of way", "Worksite and creation of public right of way", "Footbridge", "Creation of public right of way and access for construction of the authorised works";*
- London Borough of Havering: Delete text *"04, 04A, 05, 06, 08, 01, 02, 11, 16";*
- Delete *"Borough of Southend-on-Sea", "11, 12", "Access for removal of level crossing";*
- In Schedule 7 Streets subject to Alteration of Layout:
  - Delete all entries with the exception of *"Parish of Elsenham" "Old Mead Road" "Creation of footway"*
- In Schedule 8 Streets Subject to Street Works:
  - Delete all entries with the exception of (a) *"County of Essex District of Uttlesford Parish of Newport Debden Road";* (b) *"Parish of Elsenham Old Mead Road";* (c) *"Parish of Kelvedon Snivellers Lane";* and (d) *"District of Tendring Parish of Harwich Ferndale Road / Maria Street".*
- In Schedule 9 Streets to be Temporarily Stopped Up:
  - In County of Essex District of Uttlesford Parish of Elsenham: delete *"Footpath EX/13/29 (Elsenham)", "Between points P079 and P080", "Path not on definitive map", "Between points P082 and P079";*
  - Delete *"Parish of Littlebury", "Footpath EX/31/30 (Littlebury)", "Between points P137 and P138", "Byway Open to All Traffic EX/31/3 (Littlebury)", "Entire Length";*

- Delete "Parish of Boreham", "Bridleway EX/213/23 (Boreham)", "Between points P158, P159 and P160", "Footpath EX/213/24 (Boreham)", "Between points P163, P164, P166 and P162", "Path not on definitive map", "Between points P163, P167, and P165";
- Delete "Parishes of White Notley and Cressing", "Footpath EX/120/13 (White Notley)", "Between points P179A, P181A, P182A, P183A and P184A", "Path not on definitive map", "Between points P183A and P184A", "Footpath EX/74/37 (Cressing)", "Within Order limits";
- Delete "Parish of Rivenhall", "Footpath EX/105/423 (Rivenhall)", "Between points P192, P193, P194 and P195", "Footpath EX105/45 (Rivenhall)", "Within Order limits", "Footpath EX/105/47 (Rivenhall)", "Within Order limits";
- Delete "Parish of Wakes Colne", "Footpath EX/152/11 (Wakes Colne)", "Within Order limits", "Footpath EX/152/12 (Wakes Colne)", "Within Order limits", "Footpath EX/152/7 (Wakes Colne)", "Between points P248, P251, P258 and P252", "Footpath EX/152/8 (Wakes Colne)", "Between points P247, P250 and P248";
- Delete "Parish of Mount Bures", "Footpath EX/146/2 (Mount Bures) Between points p245, P246 and P247";
- Delete "District of Braintree Parish of Bures Hamlet", "Station Hill", "Within Order limits", "Water Lane", "Within Order limits", "The Paddocks", "Within Order limits";
- In the Parish of Wrabness, delete "P281, P282 and P283"
- Delete "Borough of Colchester Parish of Wivenhoe", "Path not on definitive map", "Between points P292, P293 and P294", "Phillip Road", "Within Order limits", "High Street", "Within Order limits", "Station Road", "Within Order limits", "Queens Road", "Within Order limits", "Valley Road", "Within Order limits", "Paget Road Within Order limits";
- Delete "District of Tendring Parish of Alresford", "Tenpenny Hill", "Within Order limits";
- In Thurrock: delete "Footpath 4 (Thurrock)", "Between points P391 and P392", "Footpath 32 (Thurrock)", "Between points P394, P395, P396 and P397";
- In London Borough of Havering: delete "Footpath 251 (Havering)", "Between points P354, P358, P359 and P360", "Path not on definitive map", "Between points P358, P365 and P360", "Ockendon Road", "Within Order limits";
- Delete text: "Borough of Brentwood Parish of West Horndon", "Footpath EX/313/39 (West Horndon)", "Between points P391, P386 and P387";

- Delete text: "*District of Basildon*", "*Footpath EX/279/136 (Basildon)*", "*Between points P415, P416, P417, P418 and T006*", "*Pitsea Hall Lane*", "*Within Order limits*";
  - Delete text "*City of Chelmsford Parish of Rettendon*", "*Footpath EX/229/23 (Rettendon)*", "*Between points P432, P433 and P434*", "*A1245*", "*Within Order limits*";
  - In Schedule 10 Access to Works
    - Delete text "*District of Basildon*", "*Improved access off Pitsea Hall Lane*";
- 14.5 A number of the Order Plans were amended by Network Rail during the course of the inquiry<sup>327</sup>. Where the plans remain relevant following the recommendations above, the revised Order Plans and Sections should be used in making this Order. In addition, if the recommendation regarding H04 Tednambury is accepted, "*Replacement Sheet 8 dated 07 September 2018*"<sup>328</sup>; should be used.
- 14.6 The deemed planning permission should be granted for the works that would be authorised by the Order, subject to the conditions as set out in Appendix 10. If the Secretary of State is minded to accept the recommendations regarding the deletion of certain crossings from the Order, then the condition requested by CBC for the protection of archaeological remains within the work areas of E51 and E52 would not be applicable.
- 14.7 Two sets of conditions have therefore been appended to the Report; the suggested conditions in Appendix 10 should be attached to the deemed planning permission should the Secretary of State be minded to accept my recommendation and not include E51 and E52 within the Order.
- 14.8 The suggested conditions set out in Appendix 11 should be attached to the deemed planning permission should the Secretary of State conclude that E51 and E52 should be included in the Order.

*Alan Beckett*

INSPECTOR

---

<sup>327</sup> NR 157; NR 197

<sup>328</sup> OBJ 128 inquiry document 1



## **APPENDIX 1**

### **APPEARANCES**

#### **For the Applicant, Network Rail Infrastructure Limited**

Miss Lean	of Counsel, instructed by
Miss Anderson	Solicitor, Winckworth Sherwood
Who called:	
Mr Brunnen	Route Asset Manager
Dr Algaard	Director, Route Safety and Asset Management, Anglia Route
Mr Billingsley	Equity Partner, Bruton Knowles
Mr Kenning	Senior Project Engineer, Level Crossing Development Team
Mr Fisk	Route Level Crossing Manager, Anglia Route
Ms Tilbrook	Projects Director, Mott MacDonald

#### **Objectors**

##### **For Essex County Council**

##### **(OBJ 195)**

Miss Taylor	Solicitor, Legal Services, Essex County Council
Miss Velati	Solicitor, Legal Services, Essex County Council

Who called:

Dr Southgate	Transport Strategy Manager
Miss Baker	Definitive Map Records Officer
Mr Lee	Public Rights of Way and Records Analyst
Mr Seager	Road Safety Engineer
Mr Corbyn	Road Safety Engineer
Mr Cubbin	Road Safety Strategy Analyst

##### **For Colchester Borough Council (OBJ 141)**

Mr Harman	Holmes & Hills LLP
-----------	--------------------

Who called:

Miss Forkin	Transport & Sustainability Manager
-------------	------------------------------------



**For the Ramblers (OBJ 148)**

Miss Golden of Counsel

Who called:

Mr Bird

Mr Glass

Mr Goffee

Mr Naylor

Mr Coe

Ms Hobby

Mr De Moor

Mr Russell

Motion Transport

Mr Evans

Mrs Evans

**For the Essex Local Access Forum (OBJ 142)**

Mrs Evans

Mrs Dobson

**For the National Farmers Union (OBJ 034)**

Miss Staples

Rural Chartered Surveyor, NFU

**For Newport Parish Council (OBJ 144)**

Mr Ayles

**For Wivenhoe Town Council (OBJ 029)**

Mr Kay

Cllr Liddy

Cllr Needham

**For the Wivenhoe Society (OBJ 047)**

Mr Hill

(OBJ 046)

**For Wrabness Parish Council (OBJ 127)**

Mr Colley

**For Great Bentley Parish Council (OBJ 070)**

Mr Plummer

**For Bures Hamlet Parish Council**

Mr Welch

Mrs Aires

Mr Lee

**(OBJ 132)**

Chairman, Bures Hamlet PC

Parish RoW Committee Member

Vice-Chairman, Bures Hamlet PC

**For Cromwell Manor Functions**

Mr Gandey

**(OBJ 129)**

UNiserve

**For Mr Mee**

Mr Creed

**(OBJ 013)**

Strutt & Parker

**For Mr Smith**

Mr Creed

**(OBJ 139)**

Strutt & Parker

**For S & J Padfield**

Mr Creed

**(OBJ 155)**

Strutt & Parker

**For Mr Edmonston**

Mr Edwards

**(OBJ 128)**

Savilles

who called:

Mr Edmonston

**For E&A Strategic Land**

Mr Burbridge

**(OBJ 105)**

Iceni Projects

**For E & K Benton Ltd**

Mr Benton

**(OBJ 030)**

**For Audley End Estate**

Mr White

**(OBJ 066)**

Resident Agent

**For the Open Spaces Society**

Mr Lees

**(OBJ 207)**

**Unrepresented objectors**

Mr Camp

(OBJ 069)

Ms Holmes

(OBJ 115)

Miss Clarke

(OBJ 080)

Mr Hutley

(OBJ 085)

Mrs Hutley

Mr Roberts

(OBJ 101)

Mr Hope (OBJ 003)

Mr Philpot (OBJ 053)

Ms Partridge (OBJ 205)

Dr Thompson (OBJ 086)

**Interested Party**

Mr Kent

## APPENDIX 2 CORE DOCUMENTS

NR01	Application
NR02	Draft Network Rail (Essex and Others Level Crossing Reduction) Order
NR03	Explanatory Memorandum
NR04	Statement of Aims
NR05	Statement of Consultation
NR06	Funding Statement
NR07	Estimate of Costs
NR08	Order Plans and Sections
NR09	Book of Reference
NR10	Planning Statement
NR11	EIA Screening Decision Letter
NR12	Design Guide
NR13	Management of Health and Safety at Work Regulations 1999
NR14	ORR: Strategy for regulation of health and safety risks – 4; Level Crossings
NR15	ORR: Periodic Review 2013: Final determination of Network Rail’s output funding for 2014 - 2019
NR16	Road Safety Audits for Essex and Others
NR17	Transforming Level Crossings 2015 - 2040
NR18	Client Requirement Documents Anglia CP5 Level Crossing Reduction Strategy
NR19	CP5 Level Crossing Risk Reduction Fund criteria, Governance and Reporting
NR20	Network Rail Standard NR/L1/XNG/100: Level Crossing Asset Management Policy
NR21	Network Rail Standard NR/L2/SIG/19608: Level crossing asset inspection and implementation of minimum actions codes
NR22	Network Rail Operations Manual NR L3 OCS 041 5-16: Risk Assessing Level Crossings
NR23	Network Rail Level Crossing Guidance 01: Completion of Site Visit and Census Forms
NR24	Anglia Route Study (March 2016)
NR25	Censuses of Essex and Others sites

NR26	Network Rail Statement of Case
------	--------------------------------

### APPENDIX 3 STATEMENTS OF CASE

OBJ 003	Mr P Hope
OBJ 034	National Farmers Union
OBJ 047	The Wivenhoe Society
OBJ 049	Mr R Needham
OBJ 053	Mr S Philpot
OBJ 059	Cllr C Liddy
OBJ 066	Audley End Estate
OBJ 070	Great Bentley Parish Council
OBJ 085	Mr R Hutley
OBJ 086	Dr S Thompson
OBJ 101	Mr & Mrs D & V Roberts
OBJ 115	Ms S Holmes
OBJ 123	Mr F Braeckman
OBJ 127	Wrabness Parish Council
OBJ 128	Mr D Edmonston
OBJ 129	Mr I Liddell & Cromwell Manor Functions
OBJ 132	Bures Hamlet Parish Council
OBJ 137	The Herts and Middlesex Wildlife Trust
OBJ 138	Mr D Hedges
OBJ 139	Mr A R Smith
OBJ 141	Colchester Borough Council
OBJ 144	Newport Parish Council
OBJ 146	Mr J Reay
OBJ 148	The Ramblers
OBJ 155	Christopher Padfield of S&J Padfield and Partners
OBJ 164	E Camp and Sons
OBJ 173	Siggers Family and H Siggers & Son Partnership IRO
OBJ 195	Essex County Council

## **APPENDIX 4 PROOFS OF EVIDENCE – NETWORK RAIL**

### **Mark Brunnen** - *Network Rail - Level crossing reduction - National strategic case*

NR27/1 Proof of Evidence

NR27/2 Appendices

NR27/3 Summary

### **Eliane Algaard** - *Network Rail - Level crossing reduction - Anglia strategic case*

NR28/1 Proof of Evidence

NR28/3 Summary

NR28/4 Rebuttal

NR28/5 Supplementary Proof of Evidence

NR28/5.1 Appendices to Supplementary Proof of Evidence

### **Nigel Billingsley** - *Bruton Knowles - Land and property*

NR29/1 Proof of Evidence

NR29/3 Summary

### **Andrew Kenning** - *Network Rail - NR Proposals - crossing by crossing*

NR30/1 Proof of Evidence

NR30/2 Appendices

NR30/3 Summary

### **Daniel Fisk** - *Network Rail - Risk/maintenance - crossing by crossing*

NR31/1 Proof of Evidence

NR31/2 Appendices

NR31/3 Summary

NR31/4 Rebuttal

NR31/5 Supplementary Proof of Evidence

### **Sue Tilbrook** - *Mott MacDonald - Public Rights of Way*

NR32/1 Proof of Evidence

NR32/2 Appendices

NR32/3 Summary

NR32/4 Rebuttals

NR32/5 Supplementary Proof of Evidence

## **APPENDIX 5 PROOFS OF EVIDENCE AND OTHER DOCUMENTS SUBMITTED BY OTHER PARTIES**

**Mr Stuart Mee** (OBJ 013)  
Proof of Evidence

**Wivenhoe Town Council** (OBJ 029)

W1 - Mr Peter Kay  
W1 - 1 - Proof of Evidence - superseded by W1 - 3  
W1 - 2 - Summary - superseded by W1 - 4  
W1 - 3 - Revised Proof of Evidence  
W1 - 4 - Revised Summary Proof

W2 - Cllr. Robert Needham  
W2 - 1 - Proof of Evidence

W3 - Cllr. Cyril Liddy (also under OBJ 059)  
W3 1 - Proof of Evidence  
W3 2 - Appendix 1  
W3 3 - Appendix 2

**National Farmers Union** (OBJ 034)  
Proof of Evidence  
Summary

**Mr Peter Hill** (OBJ 046) and **Wivenhoe Society** (OBJ 047)  
Proof of Evidence  
Addendum to Proof of Evidence

**Cllr Cyril Liddy** (OBJ 059) - also under OBJ 029  
Proof of Evidence  
Appendix 1  
Appendix 2

**Audley End Estate** (OBJ 066)  
Proof of Evidence  
Appendix

**Mr Chris Camp** (OBJ 069)  
Proof of Evidence

**Miss Ann Clarke** (OBJ 080)  
Proof of Evidence  
Appendix

**Mr Charles Martineau** (OBJ 083)  
Proof of Evidence

**Mr Robert Hutley** (OBJ 085)  
Proof of Evidence  
Appendices



**D & V Roberts** (OBJ 101)

Proof of Evidence

Appendix

**E&A Strategic Land** (OBJ 105)

Proof of Evidence - Clive Burbridge, Icen Projects

Appendices

**Holmes Family** (OBJ 115)

Proof of Evidence

Appendices

**Mr Francis Braeckman** (OBJ 123)

Proof of Evidence

**Wrabness Parish Council** (OBJ 127)

Proof of Evidence

**Fairfield (Elsenham) Limited** (OBJ 130)

Proof of Evidence

**Mr A R Smith** (OBJ 139)

Proof of Evidence and Appendix

**Colchester Borough Council** (OBJ 141)

1 Paul Wilkinson (Transportation Policy Manager) - Proof of Evidence

**Essex Local Access Forum (ELAF)** (OBJ 142)

1 Sue Dobson - Proof of Evidence

2 Katherine Evans - Proof of Evidence

2.1 Appendix 1

2.2 Appendix 2

**Mr James Reay** (OBJ 146)

Proof of Evidence and Appendices

**The Ramblers** (OBJ 148)

W-001	T01	No.131	Gordon Bird
W-002	T04	Jefferies	Gordon Bird
W-002-S	T04	Jefferies	Gordon Bird (Summary)
W-003	H05	Pattens	David Glass
W-003-S	H05	Pattens	David Glass (Summary)
W-004	E10	Dixies	Alan Goffee
W-005	E05	Fullers End	Alan Goffee
W-006	E28	Whipps Farmers	Gordon Bird
W-006-S	E28	Whipps Farmers	Gordon Bird (Summary)
W-007	E02	Camps	David Naylor
W-008	E04	Parndon Mill	David Naylor
W-009	E56	Abbots	Jeffrey Coe
W-010	E43	High Elm	Jeffrey Coe
W-011	E46	Lords No 1	Jeffrey Coe

W-012	T05	Howells Farm	Gordon Bird
W-012-S	T05	Howells Farm	Gordon Bird (Summary)
W-013	E29	Brown and Tawse	Gordon Bird
W-013-S	E29	Brown and Tawse	Gordon Bird (Summary)
W-014	Not Allocated		
W-015	E45	Great Bentley Sta.	Jeffrey Coe
W-016	E57	Wivenhoe Park	Margaret Hobby
W-017	E41	Paget Road	Margaret Hobby
W-018	Strategic matters		Derek de Moor
W-019	Traffic / road safety		John Russell
W-019-S			John Russell (Summary)
W-019-Supp			John Russell (Supplementary Proof)
W-019-Supp A			John Russell (Appendix)
W-020	E33	Motorbike	Gordon Bird
W-020-S	E33	Motorbike	Gordon Bird (Summary)
W-021	E30	Ferry	Gordon Bird
W-022	E31	Brickyard Farm	Gordon Bird
W-023	E26	Barbara Close	Stewart & Becky Williams
W-024	HA03	Manor Farm	Joan Bullivant
W-025	HA04	Eve's	Joan Bullivant
W-025-S	HA04	Eve's	Joan Bullivant (Summary)
W-026	E35	Cranes No.1	Paul Evans
W-027	E37	Essex Way	Paul Evans
W-028	E54	Bures	Paul Evans
W-029	E51	Thornfield Wood	Margaret Hobby
W-030	E19	Potters	Paul & Katherine Evans
W-031	E20	Snivellers	Paul & Katherine Evans
W-032	E38	Battlesbridge	Katherine Evans
W-033	E52	Golden Square	Margaret Hobby
W-034	E17	Boreham	Katherine Evans
W-035	E18	Noakes	Katherine Evans
W-035 Supp			Katherine Evans (Supplementary Proof)
W-035 Supp A			Katherine Evans (Appendix)

## Appendices

36 APP1	Essex County Council Rights of Way Improvement Plan
37 APP2	Thurrock UA Rights of Way Improvement Plan
38 APP3	Design manual for roads and bridges (Highways Agency)
39 APP4	NR response letter to Ramblers, 4 September 2017
40 APP5	News Release by Met Office, 24 July 2017, "High Risk of Unprecedented Rainfall"
41 APP6	"Walking works", Walking for Health
42 APP7	DfT Cycling and Walking Investment Strategy
43 APP8	DfT Manual for Streets
44 APP9	Monitor of Engagement with the Natural Environment headline report 2015-16
45 APP10	DfT Road Safety Research Report No 11, "Understanding public attitudes to road safety"
46 APP11	Cressing Temple leaflet
47 APP12	"The John Ray Walk"
48 APP13	"Days out on the Gainsborough line"

49 APP14	Walks guide, Great Henny to Wormingford
50 APP15	NR consultation re E54
51 APP16	Highways England consultation A12 Chelmsford to A120 widening public consultation
52 APP17	Beaulieu Monument Network Strategy
53 APP18	NR consultation E20 Snivellers
54 APP19	NR consultation E19 Potters
55 APP20	RoSPA Rural Road Environment Policy Paper August 2010
56 APP21	DMRB Volume 5, Section 2 HD 19/15 Road Safety Audit
57 APP22	RoSPA - Inappropriate Speed Factsheet
58 APP23	Office of Rail and Road - Rail Safety Statistics - 2015-2016
59 APP24	Legal Submissions submitted 10 October 2017

**Mr C Padfield** (OBJ 155)

Proof of Evidence

**Mr David Atkins** (OBJ176)

Proof of Evidence

**Essex County Council** (OBJ 195)

W1 Alastair Southgate  
W1/1 Proof of Evidence  
W1/2 Appendices

W2 Helen Baker  
W2/1 Proof of Evidence  
W2/2 Appendices  
W3/3 Supplementary Proof of Evidence

W3 Robert Lee  
W3/1 Proof of Evidence  
W3/3 Appendices  
W3/2 Summary

W5 Lawrence Seager  
W5/1 Proof of Evidence  
W5/3 Summary  
W5/2 Appendix

W6 Andrew Woodhouse  
W6/1 Proof of Evidence

W7 William Cubbin  
W7/1 Proof of Evidence  
W7/2 Appendix

**Mr & Mrs Irwin**

Proof of Evidence

**Malcolm Lees on behalf of the Open Spaces Society**

Proof of Evidence

## **APPENDIX 6**

### **REBUTTAL EVIDENCE SUBMITTED BY NETWORK RAIL**

#### **Mark Brunnen**

NR27/4/1 Rebuttal of Proof of Evidence of Mr Peter Kay & Mr Cyril Liddy

NR27/4/2 Rebuttal of Proof of Evidence of Ms Sue Dobson & Ms Katherine Evans

#### **Eliane Algaard**

NR28/4/1 Rebuttal of Proof of Evidence of Paul Wilkinson

#### **Nigel Billingsley**

NR29/4/3a Rebuttal of Proof of Evidence of Louise Staples (for D&V Roberts)

NR29/4/3b Rebuttal of Proof of Evidence of Robert Hutley

NR29/4/4 Rebuttal of Proof of Evidence of Louise Staples (for NFU)

#### **Andrew Kenning**

NR30/4/1 Rebuttal of Proof of Evidence of Francis Paul Braeckman

NR30/4/2 Rebuttal of Proof of Evidence of James Harry Reay

NR30/4/3 Rebuttal of Proof of Evidence of NFU

NR30/4/4 Rebuttal of Proof of Evidence of Charles Gooch & Paul Wilkinson

NR30/4/5 Rebuttal of Proof of Evidence of Ramblers Association

#### **Daniel Fisk**

NR31/4/1 Rebuttal of Proof of Evidence of Peter Kay & Cyril Liddy

#### **Sue Tilbrook**

NR32/4/1 Rebuttal of Proof of Evidence of Essex County Council

NR32/4/2 Rebuttal of Proof of Evidence of The Ramblers Association

NR32/4/3 Rebuttal of Proof of Evidence of Wivenhoe Town Council

NR32/4/4 Rebuttal of Proof of Evidence of Louise Staples (on behalf of Audley End Estate)

NR32/4/5 Rebuttal of Proof of Evidence of Peter Hill (on behalf of the Wivenhoe Society)

NR32/4/6 Rebuttal of Proof of Evidence of Chris Camp

NR32/4/7 Rebuttal of Proof of Evidence of Robert Hutley

NR32/4/8 Rebuttal of Proof of Evidence of Clive Burbridge (on behalf of I2 Development Management and E & A Strategic Land)

NR32/4/9 Rebuttal of Proof of Evidence of Edward Rout (on behalf of Francis Paul Braeckman)

NR32/4/10 Rebuttal of Proof of Evidence of Colchester Borough Council

NR32/4/11 Rebuttal of Proof of Evidence of Edward Rout (on behalf of James Harry Reay)

NR32/4/12 Rebuttal of Proof of Evidence of Alexander Creed (on behalf of Mr A R Smith)

NR32/4/13 Rebuttal of Proof of Evidence of Wrabness Parish Council

NR32/4/14 Rebuttal of Proof of Evidence of Ann Clarke

## **APPENDIX 7**

### **REBUTTAL EVIDENCE SUBMITTED BY OTHER PARTIES**

#### **Mr Robert Hutley (OBJ 085)**

OBJ 085 R1 Rebuttal to Evidence submitted by Susan Tilbrook  
OBJ 085 R1 Appendix 1  
OBJ 085 R1 Appendix 2  
OBJ 085 R1 Appendix 3  
OBJ 085 R1 Appendix 4  
OBJ 085 R2 Rebuttal to Evidence submitted by Andrew Kenning  
OBJ 085 R3 Rebuttal to Evidence submitted by Nigel Billingsley  
OBJ 085 R4 Rebuttal to Evidence submitted by Daniel Fisk

#### **Iceni Projects Ltd (OBJ 105)**

Rebuttal of Susan Tilbrook's Proof of Evidence

#### **Essex Local Access Forum (OBJ 142)**

OBJ 142 R Rebuttal  
OBJ 142 R Appendix 1  
OBJ 142 R Appendix 2

#### **The Ramblers (OBJ 148)**

OBJ 148 R1 Rebuttal  
OBJ 148 R2 Summary  
OBJ 148 R3 Paul Evans Rebuttal - Crossing E35  
OBJ 148 R4 - Paul Evans Rebuttal - Crossing E37  
OBJ 148 R5 - John Russell Rebuttal

#### **Wivenhoe Town Council (OBJ 187)**

Rebuttal  
Appendices to Rebuttal

#### **Essex County Council (OBJ 195)**

OBJ 195 R1/1 Helen Baker Rebuttal  
OBJ 195 R1/2 Helen Baker Rebuttal and Appendix  
OBJ 195 R2 Robert Lee Rebuttal  
OBJ 195 R3 Ross Corbyn and Lawrence Seager

## APPENDIX 8

### INQUIRY DOCUMENTS SUBMITTED BY NETWORK RAIL (including documents submitted during the adjournment period)

NR 100	Network Rail Opening Statement
NR 101	Revised Order dated 18 October 2017
NR 102	Compliance Bundle 18 October 2017
NR 103	Network Rail / ECC Statement of Common Ground
NR 104	Note on minor amendments to Order
NR 105	Network Rail Note and amended plans dated 7 September 2018 (submitted during adjournment)
NR 106	Note on Monetary Benefits (submitted during adjournment)
NR 107	Note for the inspector regarding the adjournment of the inquiry dated 22 December 2017(submitted during adjournment)
NR 108	Note on the revised Book of Reference (submitted during adjournment)
NR 109(1)	Revised Book of Reference (submitted during adjournment)
NR 109(2)	Revised Book of Reference - with tracked changes (submitted during adjournment)
NR 110(1)	Note regarding compliance with statutory procedures
NR 110(2)	Compliance Bundle as submitted in September 2018 (submitted during adjournment)
NR 111	Note on revised NPPF (submitted during adjournment)
NR 112	Network Rail correspondence with Objectors not appearing at the inquiry (submitted during adjournment)
NR 113	Note on Draft Environment Agency Protective Provisions
NR 114	House of Commons Safety at Level Crossings Report
NR 115	Anglia Crossing Reduction Listing (Essex)
NR 116	Thurrock - Route Requirements Document
NR 117	Map of Essex Crossings
NR 118	Joint statement on behalf of Network Rail and ECC
NR 119	Anglia Level Crossing Reduction Strategy – Diversity Impact Assessment Scoping Report
NR 120	Diversity Impact Assessments
NR 121	Essex Equality and Diversity Overview Report Rev C
NR 122	Legal Bundle
NR 123	DMRB HD 19/15 Road Safety Audit extracts
NR 124	Note on definition of 'Suitable and convenient'
NR 125	Note on Level Crossing Benefits
NR 126	Note on Monetary Benefits: Breakdown
NR 127	Note on Filled-Up Order dated 2 October 2018
NR 128	Filled-Up Order dated 2 October 2018
NR 129	Replacement Order Plans dated 2 October 2018
NR 130	Correspondence with ECC regarding Consultation and RSA dated 20 September 2016
NR 131	Essex Transport Strategy: The Local Transport Plan for Essex - June 2011
NR 132	Once in a Generation - a Rail Prospectus for East Anglia
NR 133	DMRB - Volume 6 Road Geometry, Section 1 Links – TD 27/05 February 2005

- NR 134 DMRB - Volume 2 Highway Structures: Design (Substructures and Special Structures) Materials, Section 2 Special Structures – TD 19/06 August 2006
- NR 135 Note as to meaning of Suitable and Convenient with extracts from Oxford English Dictionary
- NR 136 DMRB - Volume 2 Highway Structures: Design (Substructures) Material, Section 2 Special Structures – BD 29/17 May 2017
- NR 137 Extract from 'Inclusive Mobility'
- NR 138 Note on Planning Policy
- NR 139 Photograph of New Footway under the bridge at Ironwell Lane (E26 Barbara Close)
- NR 140 Response to Mr Lees' written questions
- NR 141 Environmental Constraints Plan H09 Fowlers
- NR 142 Letter to HMWT dated 20 September 2018 with HMWT response dated 17 October 2018
- NR 143 Errata to Proof of Evidence submitted by Daniel Fisk
- NR 144 Extract from DfT Local Transport Note 1/11 Shared Space - October 2011
- NR 145 Extract from the Chartered Institute of Highways and Transportation Manual for Streets2 - Wider Application of the Principles
- NR 146 Plans showing E41 - Paget - proposed changes at High Street bridge
- NR 147 Three signalling plans with explanatory note regarding MSLs (E45 Great Bentley Station and E46 Lords No. 1)
- NR 148 Automatic Traffic Count - Ockendon Road, HA3 - Manor Farm and HA4 - Eves
- NR 149 Extract from the Highway Code – Typical Stopping Distances
- NR 150 NR letter to Bures Hamlet Parish Council dated 5th September 2017
- NR 151 Effects of Level Crossing equipment failure affecting signalling of trains
- NR 152 Note regarding visibility and steps at E29 Brown and Tawse
- NR 153 Note regarding process for registration of Authorised Users
- NR 154 Letter to Holland Land and Property with regard to T04 Jefferies dated 21 November 2018
- NR 155 EIA Screening Request Report
- NR 156 Letter to Hertfordshire and Middlesex Wildlife Trust dated 13 December 2018
- NR 157 Consultation letter and plans regarding proposed changes to E06 Elsenham Emergency Hut and E48 Wheatsheaf. Copies of original order limit plans 12, 13 and 14; copies of Replacement Sheets 12, 13 and 14 (E06); copies of original order limit plan 40 and replacement Sheet 40 (E48)
- NR 158 Note on examples of consequential and radiating delays dated 17 December 2018
- NR 159 Note in response to supplementary evidence submitted by Mr de Moor
- NR 160 Response to John Russell's Technical Note 02 - E38 - Battlesbridge
- NR 161 Mott Macdonald Technical Note - E51 Thornfield Wood and 52 Golden Square - Hedgerow Surveys Update
- NR 162 Note regarding withdrawal of E42 Sandpit and E57 Wivenhoe Park
- NR 163 Note in response to Mr Kay's submission on Whistle Boards Policy submitted 7 January 2019
- NR 164 Note on Section 5(6) TWA 1992 - 'required'
- NR 165 Note regarding Census Data at E26 - Barbara Close

NR 166	Note regarding Temporary Traffic Regulation Orders E30 Ferry and E31 Brickyard Farm
NR 167	Mott MacDonald report - Precautionary Method of Works: Legally Protected Species, dated December 2017
NR 168	Mott MacDonald Technical Note - Heritage Impact Assessment, dated 22 September 2017
NR 169	Note on Filled-Up Order dated 29 January 2019
NR 170	Draft Filled-Up Order dated 29 January 2019
NR 171	Tree Preservation Order relating to Ram Gorse Wood Site, dated 17 August 1990
NR 172	Schedule One - Proposed Planning Conditions
NR 173	Note regarding agreement with Audley End Estate regarding E12 Wallaces
NR 174	Mott MacDonald Technical Note regarding Visibility on Station Hill, Bures and Childerditch Lane dated 30 January 2019
NR 175	Email from Network Rail to Kier Living Eastern dated 21 January 2019 regarding E04 Parndon Mill
NR 176	Bundle of correspondence between NR and Kier Living Eastern various dates between 12 May 2017 to 21 January 2019 regarding E04 Parndon Mill
NR 177	General Arrangement Plan, E04 Parndon Mill
NR 178	Tree Preservation Order Note regarding E04 Parndon Mill
NR 179	Email Network Rail to Natural England dated 13 February 2018 in response to email of same date
NR 180	Replacement Plans for E06 and E48 (see also NR 157)
NR 181	Extracts from Sustrans website
NR 182	Policy Review and Development Panel (Colchester Borough Council) ` dated 25 February 2013
NR 183	Planning Policy: Supplementary Note with appendix R (oao) <i>Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Energy and Climate Change</i> [2012] EWHC 46)
NR 184	Note responding to Environment Agency note dated 11 October 2018 on draft protective provisions
NR 185	Note responding to RA note on outstanding issues on wording of filled up order dated 29 January 2019
NR 186	Suggested amendment to Article 14
NR 187	Proposed Planning Conditions submitted 7 February 2019
NR 188	Illustration of modifications to the Order that would arise from objector proposals to E37 Essex Way (SJR Farming Ltd), H04 Tednambury (Mr Edmonston) and T04 Jeffries (Mr Benton)
NR 189	Supplementary Correspondence Folder submitted 8th February 2019
NR 190	Note on Filled-Up Order and copy of Filled-Up Order dated 13th February 2019
NR 191	Note on Effect on Utilities to dedicating footpaths over land in which they hold apparatus
NR 192	Note regarding Plan Changes dated 07.09.18 (submitted 13 February 2019)
NR 193	Index to Legal Bundle
NR 193a	Section 48 TWA 1992
NR 193b	Hedgerow Regulations 1997
NR 193c	Section 84 RTRA 1984 - part IV Speed Limits
NR 194	not in use



NR 195	Letter from Network Rail to Keir Living Ltd dated 13 February 2019
NR 196	Two plans showing proposed amendment by SJR Farming dated 29 November 2018
NR 197	A1 copies of plans listed at NR 157
NR 198	Note in response to Inspector's request regarding temporary road closures
NR 199	Email from Network Rail to CBC regarding E41Paget dated 6 December 2018
NR 200	Closing Statement

14.9  
14.10  
14.11  
14.12  
14.13  
14.14  
14.15  
14.16  
14.17  
14.18  
14.19  
14.20  
14.21  
14.22  
14.23  
14.24  
14.25  
14.26  
14.27  
14.28  
14.29  
14.30  
14.31  
14.32

## **APPENDIX 9**

### **INQUIRY DOCUMENTS SUBMITTED BY OTHER PARTIES**

14.34

Opening Submissions October 2017

OP 100 - Opening Submission Essex County Council (OBJ 195)

OP 101 - Opening Submission Colchester Borough Council (OBJ 141)

OP 102 - Opening Submission Ramblers (OBJ 148)

OP 103 - Opening Submission Essex Local Access Forum (OBJ 142)

OP 104 - Opening Submission National Farmers Union (OBJ 34)

### **Documents submitted during the adjournment of the inquiry**

#### **Ramblers (OBJ 148)**

Katherine Evans - Supplementary Proof

Katherine Evans - Appendices to Supplementary Proof

#### **Essex County Council (OBJ 195)**

Helen Baker

Supplementary Proof of Evidence

William Cubbin

Proof of Evidence

Appendix

### **Documents Submitted following resumption of the inquiry on Tuesday, 25th September 2018**

Strutt & Parker on behalf of **Mr Mee** (OBJ 013)

1 Plan showing bus stops on Ockendon Road B1421

2 Google photograph showing bridge on Ockendon Road B1421

#### **E & K Benton Limited (OBJ 030)**

1 Letter dated 16th November 2018 regarding further points with regard to the proposed alternative footpath at T04 - Jefferies

2 Letter dated 28th November 2018 following appearance at inquiry

3 Letter dated 11th December 2018 to Thurrock Council regarding proposed revised route

4 Plan showing revised route

5 Closing Submission

#### **Councillor Liddy (OBJ 059)**

1 Note presented by Cllr Liddy

2 Accident Report email trail

3 Closing Submission

#### **D Edmonston (OBJ 128)**

1 Replacement Sheet 08 revision date 07 09 2018

2 Consultation correspondence

**Bures Hamlet Parish Council** (OBJ 132)

- 1 Statement to inquiry by Michael Welch, Chairman
- 2 Statement to inquiry by Janet Aries, Parish Rights of Way Committee Member and Representative
- 3 Statement to inquiry by David Lee, Vice Chairman

**Herts and Middlesex Wildlife Trust** (OBJ 137)

- Letter dated 17 October 2018 regarding partial objection withdrawal  
Letter dated 14 December 2018 maintaining objection

**D Hedges** (OBJ 138)

- Email dated 19 October 2018 - additional statement to objection

**A R Smith** (OBJ 139)

- Photograph of Maldon Road overbridge  
Letter from Strutt & Parker to Network Rail dated 5 February 2019

**Colchester Borough Council** (OBJ 141)

- 1 Rachel Forkin supplement to Proof of Evidence
- 2 Comments re Conditions
- 3 E51 Thornfield Wood and E52 Golden Square Hedgerow Survey Sheets with photographs
- 4 Planning Note
- 5 Hedgerows Regulations 1997 - A Guide to the Law and Good Practice
- 6 Closing Statement

**Essex Local Access Forum** (OBJ 142)

- 1 Note of orally presented strategic evidence presented by Sue Dobson
- 2 Note of orally presented strategic evidence presented by Katherine Evans
- 3 Additional evidence on Crossings E17 - Boreham and E18 - Noakes by Sue Dobson
- 4 Additional evidence on Crossings E19 - Potters and E20 - Snivellers by Katherine Evans
- 5 Closing Submission

**Newport Parish Council** (OBJ 144)

- Statement given by Stephen Ayles with additional comments by Neil Hargreaves (OBJ 180)

**The Ramblers** (OBJ 148)

- 1 Note on Mr Russell's revised position on E38 following evidence presented to inquiry
- 2 Extract from DMRB (TA 90/05)
- 3 Copy of outline Planning Permission to Bellway Homes dated 1 July 2013
- 4 Extract from 'inclusive mobility' - 8.4 changes in level
- 5 Note on Public Sector Equality Duty Requirements & DIA documentation
- 6 Note regarding the withdrawal of objections to proposals at E04 Parndon Mill and E48 Wheatsheaf.
- 7 Supplementary proof of evidence of Mr De Moor.
  - App 1 to supplementary proof - NICE 2018 Guidance pp. 1 – 19
  - App 2 to supplementary proof - NICE 2018 Guidance, Glossary
- 8 Note on calculations made of dimensions of underpass H05/H06
- 9 Additional evidence regarding HA3 Manor Farm

- 10 Additional evidence regarding HA4 Eve's Crossing
- 11 Letter from DfT to Douglas Carswell MP dated 29 October 2012
- 12 Letter from DfT to Douglas Carswell MP dated 29 April 2013
- 13 Appeal Decision Station Field, Plough Road, Great Bentley 29 September 2016
- 14 Essex County Council's plan of the favoured route for the A120 between Braintree and the A12, announced in June 2018
- 15 Visibility Technical Note
- 16 Submission in response to NR Planning Policy Note
- 17 RA Note regarding Accompanied Site Visits
- 18 Technical Note 4 - E28 - Whipps Farm and appendices
- 19 Closing Statement

**S & J Padfield** (OBJ 155)

- 1 Letter from Strutt & Parker dated 28 January 2019
- 2 Plan showing alternative blue route

**Wivenhoe Town Council** (OBJ 187)

- 1 Oral presentation given by Peter Kay
- 2 RSSB response to ORR consultation July 2010 (p.1-2)
- 3 Google photograph of Station Road
- 4 Submission regarding Whistle Boards Policy
- 5 Closing Submission

**Essex County Council** (OBJ 195)

- 1 Joint Statement with Network Rail on Road Safety Audits
- 2 Note to Inspector regarding withdrawal of evidence and clarification of position
- 3 Extract from Essex Online Highways Information Map
- 4 Extract from Inclusive Mobility - Mobility impaired and visually impaired people
- 5 Plan showing location of bus stops in vicinity of E30 and E31
- 6 Assessment of Walked Routes to School (Road Safety GB/ROSPA)
- 7 Photographs from various angles at Crossings E51 - Thornfield Wood and E52 - Golden Square
- 8 Closing Submission

**Open Spaces Society**

Questions from Malcolm Lees to Network Rail – General and E38 Battlesbridge

- 14.35
- 14.36
- 14.37
- 14.38
- 14.39
- 14.40
- 14.41
- 14.42
- 14.43

## **APPENDIX 10 – conditions if E51 and E52 are omitted from the Order**

### **SCHEDULE ONE**

#### **PROPOSED PLANNING CONDITIONS**

##### **Interpretation**

In the following conditions: –

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

“the local planning authority” means Basildon District Council, Braintree District Council, Brentwood Borough Council, Broxbourne Borough Council, Castle Point Borough Council, Chelmsford City Council, Colchester Borough Council, East Hertfordshire District Council, Epping Forest District Council, Harlow District Council, London Borough of Havering, Rochford District Council, Southend-on-Sea Borough Council, Tendring District Council, Thurrock Council, Uttlesford District Council as respects development in their respective areas;

“Network Rail” means Network Rail Infrastructure Limited;

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

“Precautionary Method of Works” means The Anglia Level Crossing Reduction Strategy Precautionary Method of Works December 2017 prepared by Mott Macdonald; and

“the scheduled monument” means the crop mark site south of Ardleigh in the District of Tendring, list entry number 1002146.

##### **Time limit for commencement of development**

1. The development must commence before the expiration of five years from the date that the Order comes into force.

*Reason: To set a reasonable time limit for the commencement of the development and to avoid blight.*

##### **Detailed design approval**

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

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

## **Ecology**

3. During the bird nesting season (1 March to 31 August), trees and any other suitable habitat affected by the works shall be searched for nesting birds and if any nesting birds are found the nest shall be protected until the young have fledged and left the nest.
4. In relation to protected species, where relevant, the development shall be carried out in accordance with the Precautionary Method of Works.

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

## **Archaeology**

5. No development shall commence until a scheme identifying: (a) any location where a watching brief is required during construction, and (b) appropriate measures to be taken if any significant archaeological remains are found, is submitted in writing and approved by the local planning authority.

*Reason: To ensure that archaeological artefacts and information are preserved.*

## **Working hours**

6. Except where:
  - (a) work is taking place on Network Rail's land, or
  - (b) works in, to or affecting the highway are confirmed by the relevant highway authority to require it

construction of the development shall only be carried out between the hours of 8.00 am and 6.00pm.

*Reason: To preserve local amenity*

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

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

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

## **Scheduled Monument**

8. No physical works (including signposting) will be undertaken so as not to disturb the scheduled monument.

*Reason: To protect the scheduled monument site.*

Informative note: The highway authority should be consulted on any works affecting the highway.

## **APPENDIX 11 – conditions if E51 and E52 are included in the Order**

### **SCHEDULE ONE**

#### **PROPOSED PLANNING CONDITIONS**

##### **Interpretation**

In the following conditions: –

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

“the local planning authority” means Basildon District Council, Braintree District Council, Brentwood Borough Council, Broxbourne Borough Council, Castle Point Borough Council, Chelmsford City Council, Colchester Borough Council, East Hertfordshire District Council, Epping Forest District Council, Harlow District Council, London Borough of Havering, Rochford District Council, Southend-on-Sea Borough Council, Tendring District Council, Thurrock Council, Uttlesford District Council as respects development in their respective areas;

“Network Rail” means Network Rail Infrastructure Limited;

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

“Precautionary Method of Works” means The Anglia Level Crossing Reduction Strategy Precautionary Method of Works December 2017 prepared by Mott Macdonald; and

“the scheduled monument” means the crop mark site south of Ardleigh in the District of Tendring, list entry number 1002146.

##### **Time limit for commencement of development**

1. The development must commence before the expiration of five years from the date that the Order comes into force.

*Reason: To set a reasonable time limit for the commencement of the development and to avoid blight.*

##### **Detailed design approval**

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

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



## Ecology

3. During the bird nesting season (1 March to 31 August), trees and any other suitable habitat affected by the works shall be searched for nesting birds and if any nesting birds are found the nest shall be protected until the young have fledged and left the nest.
4. In relation to protected species, where relevant, the development shall be carried out in accordance with the Precautionary Method of Works.

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

## Archaeology

5. No development shall commence until a scheme identifying: (a) any location where a watching brief is required during construction, and (b) appropriate measures to be taken if any significant archaeological remains are found, is submitted in writing and approved by the local planning authority.

*Reason: To ensure that archaeological artefacts and information are preserved.*

6. No preliminary works or development in the Borough of Colchester in relation to crossings E51 Thornfield Wood and E52 Golden Square shall commence until either:
  - (a) a programme of archaeological work including a written scheme of investigation for plots 02 and 05 in the Parish of Mount Bures (as shown on the Order limit plan replacement sheets 35 [revision date 31 August 2018] and 36 [revision date 22 August 2018] and plots 08 and 16 in the Parish of Wakes Colne (as shown on Order limit plan replacement sheets 35 [revision date 31 August 2018] and 37 [revision date 22 August 2018] has been submitted to and approved by the local planning authority. Preliminary works and development shall take place in accordance with the approved scheme. The approved scheme shall be implemented in full including any post development requirements, such as archiving and submission of final reports; or
  - (b) Network Rail has submitted confirmation in writing to the local planning authority that topsoil will not be removed in plots 02 and 05 in the Parish of Mount Bures and plots 08 and 16 in the Parish of Wakes Colne (as shown on plans detailed in condition 6 (a) above) and the local planning authority agrees that no written scheme of investigation is necessary, or is deemed to have agreed if it fails to respond within 28 days of receipt of Network Rail's written confirmation.

*Reason: To ensure that where topsoil removal is required for working compounds archaeological artefacts and information are preserved.*

## **Working hours**

7. Except where:

(a) work is taking place on Network Rail's land, or

(b) works in, to or affecting the highway are confirmed by the relevant highway authority to require it

construction of the development shall only be carried out between the hours of 8.00 am and 6.00pm.

*Reason: To preserve local amenity*

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

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

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

## **Scheduled Monument**

9. No physical works (including signposting) will be undertaken so as not to disturb the scheduled monument.

*Reason: To protect the scheduled monument site.*

Informative note: The highway authority should be consulted on any works affecting the highway.



---

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

**by Alan Beckett BA MSc MIPROW**

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

**Date: 19 May 2021**

---

**TRANSPORT AND WORKS ACT 1992**

**TOWN AND COUNTRY PLANNING ACT 1990**

**THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION)  
ORDER 201X**

**APPLICATION FOR DEEMED PLANNING PERMISSION**

Dates of Inquiry: 18 October 2017 – 13 February 2019

File Ref: DPI/Z1585/17/12

## ABBREVIATIONS & GLOSSARY

CCTV	Close Circuit Television
DIA	Diversity Impact Assessment
PSED	Public Sector Equality Duty

## CASE DETAILS

### THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER 201X

#### And

### APPLICATION FOR DEEMED PLANNING PERMISSION

- The Order would be made under sections 1 & 5 of, and paragraphs 2 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the Transport and Works Act 1992.
- The deemed planning permission would be granted by a Direction under section 90(2A) of the Town and Country Planning Act 1990.
- The application for the Order and deemed planning permission was made on 31 March 2017 and there were 190 objections outstanding to it at the commencement of the local inquiry.

### The Inquiry

1. The inquiry opened on Wednesday 18 October 2017 and was adjourned on the third day as an audit of the Book of Reference undertaken by the Land Agents acting for Network Rail had revealed that the required statutory notice had not been served on a number of parties.
2. The inquiry resumed on Tuesday 25 September 2018 and sat for 7 consecutive weeks before adjourning once again on 9 November 2018. Thereafter the inquiry sat on 20-23 November 2018, 4 – 6 December 2018 and 29 January 2019 to 13 February 2019, a total of 48 sitting days. The inquiry considered the above-named order drafted by the Secretary of State.
3. The Order and deemed planning permission would authorise the closure or downgrading of a number of level crossings in the Counties of Essex and Hertfordshire, in the London Borough of Havering, in the Borough of Thurrock and in the Borough of Southend-on-Sea. In relation to these closures or downgradings the Order would also authorise the carrying out of works including the removal of the crossings from the railway and the stopping up, diversion or downgrading of the status of certain public roads, footpaths, bridleways, restricted byways and byways open to all traffic and the creation of new public rights of way.
4. The Order would also authorise the construction of new footbridges to carry public rights of way over drains or watercourses. The Order would also permit Network Rail to acquire land and interests in land in connection with the construction of the works to be authorised under the Order.

### E49 Maria Street

5. In considering the Report submitted to him, the Secretary of State has queried the basis on which the recommendation regarding E49 Maria Street ('E49') was made. The Secretary of State has noted that the report states at paragraph

5.36.25 that “*dropped kerbs are present at road junctions which would accommodate all users of the current crossing*” and that at paragraph 5.36.28 “*the proposed route is fully accessible*”.

6. The Secretary of State has also noted that these statements appear to be contradicted by the physical appearance of the footways at the Alexandra Road CCTV level crossing shown in the photograph contained within the DIA undertaken for E49. This photograph shows the presence of raised kerbs on the west side of Alexandra Road CCTV crossing.
7. The Secretary of State understands from the report that the accessibility of the proposed alternative route was the determining factor in my conclusion that the proposed route would be suitable and convenient for users of the current crossing. Given that raised kerbs were present on the western side of the Alexandra Road CCTV crossing, clarification was sought as to the factual basis on which the conclusion and recommendation found in the report was made.

### **Reasons**

8. E49 Maria Street and Alexandra Road CCTV crossing are located on the Harwich to Manningtree railway line within the built-up area of Harwich Town. The railway line at this point is bounded by residential streets. A journey between E49 and Alexandra Road CCTV crossing can be undertaken on foot via Ferndale Road, Fernlea Road and Alexandra Road (on the east side of the railway) and via Maria Street, Albert Street and Alexandra Road (on the west side of the railway). At the corner of each of these roads are dropped kerbs which provide crossing points by which all users of the footway can cross from one side of the road to the other.
9. Dropped kerbs and an area of ramped tarmac was present at the western end of Ferndale Road which provided access to E49 from the east. There was a similar ramped access at the eastern end of Maria Street which provided access directly on to the road; the kerbs of the footways on Maria Street on the western side of the crossing being raised from the roadway.
10. As noted above, the photograph of the Alexandra Road CCTV crossing taken from the west shows the footways approaching the crossing to have raised kerbs. My recollection of the eastern approach to the crossing on the southern side of Alexandra Road is that the footway merges into an area segregated for pedestrians to traverse the crossing without a change of level. The segregated area is marked by a continuous white line running the full width of the crossing to the footway on the western side. On the northern side of Alexandra Road on the eastern side of the crossing the raised kerb of the footway met the continuous white line of the segregated area on that side of the road.
11. The physical characteristics of E49 and Alexandra Road CCTV crossing are therefore similar in that there are raised kerbs to the footways on the western side of both crossings. Whilst the approach to E49 from the east is accessible on both sides, there is only an accessible approach to Alexandra Road CCTV crossing from the east on the southern side. The dropped kerbs at either side of the junction of Fernlea Road and Alexandra Road would permit users to cross to the southern footway to approach Alexandra Road CCTV crossing.
12. It is acknowledged that the description of the proposed alternative route as being “*fully accessible*” (paragraph 5.36.28 of the Report) is therefore erroneous. The

alternative route is not fully accessible from the western side due to the raised kerbs on the approach to the crossing. However, the crossing appears to be no less accessible than E49 as there are raised kerbs on the footways on either side of Maria Street. I consider that users able to negotiate the raised kerbs on the western side of E49 are likely to be able to negotiate the raised kerbs on the western side of Alexandra Road CCTV crossing.

### **Other matter**

13. Paragraph 5.36.18 of the report erroneously refers to Alexandra Road CCTV crossing being 100m to the south of E49. The distance between the two crossings along the railway line is approximately 180 metres.

### **Conclusions and Recommendations**

14. Taking all these matters into account, I consider that the recommendation originally made in the Report in respect of E49 remains valid. The proposed alternative routes on the eastern and western sides of the railway would provide users of the current crossing with a suitable and convenient means of traversing the railway.
15. However, if the Secretary of State considers that the presence of the raised kerbs on the western side of the Alexandra Road CCTV crossing would result in an unsuitable and inconvenient alternative for users of the current crossing or that the PSED would not be met in relation to this proposal, then he should omit E49 from the Order.
16. Should the Secretary of State conclude that E49 should not be included in the Order, then the following modifications to section 14 of the report would be required:
  - in the table at paragraph 14.3 amend the entry for E49 Maria Street from 'Include' to 'Do not include';
  - in paragraph 14.4: amend the Schedule to the filled-up Order dated 13 February 2019 (NR/190) as follows:
    - in Schedule 2, part 2; 'Closure of level crossings not subject to opening of new highway': delete "*Maria Street*", "*District of Tendring Parish of Harwich*", "*Maria Street between points P288 and P289*", "*Path not on definitive map between points P288 and P289*";
    - in Schedule 8; 'Streets subject to Street Works' - Delete all entries with the exception of (a) "*County of Essex District of Uttlesford Parish of Newport Debden Road*"; (b) "*Parish of Elsenham Old Mead Road*"; (c) "*Parish of Kelvedon Snivellers Lane*";
    - in Schedule 9; 'Streets to be Temporarily Stopped Up', Delete "*Parish of Harwich*", "*Maria Street/Ferndale Road*", "*Within Order limits*";
    - in Schedule 10: 'Access to Works', Delete "*Parish of Harwich*", "*Vehicular access*";

*Alan Beckett*

Inspector



Department  
for Transport

Natasha Kopala  
Head of the TWA Orders Unit  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

16 March 2022

Winckworth Sherwood  
Solicitors and Parliamentary Agents  
Minerva House  
5 Montague Close  
London  
SE1 9BB

Dear Sirs,

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

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, Mr Alan Beckett BA MSc MIPROW, who held an inquiry between 18 October 2017 and 20 October 2017, 25 September 2018 and 9 November 2018, 20 November 2018 and 23 November 2018, 4 December 2018 and 6 December 2018, and 29 January 2019 and 13 February 2019, into the application made by your clients, Network Rail Infrastructure Limited (“NR”) for:

- a) the Network Rail (Essex and Others Level Crossing Reduction) Order (“the Order”), to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”); and
- b) a direction (“the Planning Direction”) granting deemed planning permission, subject to conditions, for the works that are the subject of the Order under section 90(2A) of the Town and Country Planning Act 1990.

2. Enclosed with this letter is a copy of the Inspector’s Report. All “IR” references in this letter are to the specified paragraph in the Inspector’s Report. All references to documents submitted by NR are also referred to with codes in the form “NR-xx”. The names of objectors, supporters and those who made other representations are accompanied by their reference number in the form “OBJ-xxx”, “SUPP-xxx” or “REP-xxx”.

3. The Order as applied for would allow NR to close or downgrade 61 level crossings in the counties of Essex and Hertfordshire, the Borough of Thurrock, the Borough of Southend-on-Sea and the London Borough of Havering. Between the application and the end of the public inquiry, NR withdrew 4 level crossings (see paragraph 4 below). As such, the Order as considered in this letter would allow NR to close or downgrade 57 level crossings in the above local authorities. The Order would also authorise: the carrying out of works including the removal of the crossings from the railway; the stopping up, diversion or downgrading of rights of way; the construction of new footbridges to carry rights of way over drains or watercourses and the compulsory acquisition of land and interests in land in connection with the construction of the works authorised under the Order.

4. The Secretary of State notes that after submitting the application, NR withdrew 4 level crossings (E12 Wallaces, E42 Sand Pit, E57 Wivenhoe Park and H03 Slipe Lane) from the draft Order (IR 1.15). It is this version of the Order that the Secretary of State is basing his decision on. NR now seeks powers to:
- a. Close 40 level crossings following provision of a new alternative right of way;
  - b. Close 13 level crossings where an alternative route already exists (three of which are footbridges over the site of the crossing);
  - c. Extinguish public rights of way over 2 crossings (private vehicular rights to be kept);
  - d. Close one crossing which only has private rights of access;
  - e. Downgrade one crossing from a road to a bridleway with private vehicular rights.

### **Summary of Inspector's Recommendations**

5. The Inspector recommended that the Order should be made, subject to modifications, and that deemed planning permission should be granted subject to conditions as set out in Appendix 10 of the Inspector's Report.

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

6. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications and to give the Planning Direction, subject to conditions set out in Annex A to this letter.**

7. **The table at paragraph 347 of this letter sets out the level crossings that should be included in the Order and those that should be removed.**

### **Secretary of State's Consideration**

8. Careful consideration has been given to all the arguments put forward by or on behalf of all parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. Where not stated, the Secretary of State can be taken to agree with the recommendations and conclusions put forward by the Inspector.

9. The application for the Order and deemed planning permission was made on 31 March 2017. There were 190 objections outstanding to it at the commencement of the local inquiry, and 196 when it reconvened, two of which have since been withdrawn. In addition, seven letters of support were received along with five representations, two of which have since been withdrawn. There were some objections relating purely to the withdrawn level crossings mentioned in paragraph 4 above which the Inspector did not consider as part of the proceedings.

10. After receiving the Inspector's Report, the Secretary of State received one new representation and one new letter of support, as well as a number of further representations from parties who had already made representations on the application before the Inquiry began. Where not otherwise discussed in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the Inspector in his report and also do not give rise to an alternative conclusion or decision on the Order.



11. The Secretary of State issued a screening decision on 15 March 2017 which stated that an Environmental Impact Assessment was not required in relation to the project which is to be the subject of the Order.

### **Legal and Procedural Matters**

12. In making this application, NR complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Rules”). This included serving copies of the application and the accompanying documents on the persons specified in the 2006 Rules. NR also displayed and published notices giving information about the application and how to make representations and served notice on those whose rights over land would be extinguished under the Order.

13. The Secretary of State notes that on 20 October 2017, the Inspector was notified that a number of parties had not been served notice of the application (IR 1.2). The inquiry was thus adjourned and NR subsequently served notice on those identified. NR served notice on further parties on 8 November and 23 November (IR 1.5). Given that the inquiry was adjourned from 20 October 2017 to 25 September 2018, the Secretary of State is satisfied that all those affected were able to make use of at least the 42-day statutory notice period to consider the effects of the application on their interests, and that the appropriate procedures under the 2006 Rules were followed.

### Whether use of the Transport and Works Act 1992 is appropriate

14. The Secretary of State notes there was disagreement between NR and the Ramblers (OBJ-148) over whether it was appropriate for NR to secure the diversion of Public Rights of Way (“PROWs”) over level crossings through a TWA Order, as other mechanisms which could achieve the same were available to NR. The Ramblers contend that the powers to close and divert PROWs over level crossings exist under sections 118A and 119A of the Highways Act 1980 (“the 1980 Act”) and are the correct statutory procedures which should be applied by NR to carry out the level crossing closures under the Order (IR 2.2). The Essex Local Access Forum (“ELAF”) also argued that the 1980 Act was a more appropriate route for the closure and diversion of PROWs that cross railways lines (IR 2.21-2.22).

15. The Secretary of State notes NR’s position (IR 2.23-2.39) that none of the statutory procedures which the Ramblers (OBJ-148) contend should be used instead of a TWA Order could, in fact, be used to achieve the strategic objectives of the application (IR 2.30) and that there is no basis for concluding that a TWA Order is not an appropriate and lawful means of seeking to affect the objects of this Order (IR 2.39). The Inspector’s position (IR 2.40-2.52) is that the relevant sections in the 1980 Act for the stopping up or diversion of PROWs over railway crossings would not confer upon NR the objectives of the Order applied for under the TWA, and therefore, the use of the TWA is appropriate (IR 2.52). The Secretary of State agrees with this.

### The tests to be applied

16. The Secretary of State notes the Inspector’s conclusion that there are two stages to the consideration of the Order (IR 2.80). Firstly, the strategic case for the Order must

be considered (IR 2.79); this includes consideration of the merits of NR's case in relation to the making the Order under section 1 of the TWA (IR 2.80). Secondly, if this is accepted, then each crossing should be evaluated against the tests set out in section 5(6) of the TWA, namely, whether an alternative route is required (IR 2.80) and, if so, whether that alternative is suitable and convenient (IR 2.87), as part of reaching his overall conclusion for each crossing, citing guidance that "[i]f 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" (IR 2.82). The Secretary of State further notes that both NR and the Ramblers (OBJ-148) are in agreement with this two-stage process (IR 2.54, 2.73, 2.77). The Secretary of State agrees it is appropriate.

17. The Secretary of State notes that the Inspector considers that the test in section 5(6) does not include consideration of the 'enjoyment' to be derived from a particular PROW and that what is required is consideration of the proposed alternative route in terms of whether it would provide a 'suitable and convenient' route by which users could continue to make their journey without affecting the purpose of that journey (IR 2.87). The Secretary of State agrees with the Inspector that an assessment of a proposed alternative route cannot be made simply in the light of those currently using the crossing (who may be young and without mobility impairments) as this is unlikely to discharge the Public Sector Equality Duty ("PSED") (IR 2.90-91). Consideration therefore needs to be given to the needs of both current and potential users to ensure that a proposed alternative does not perpetuate restrictions on those who might qualify as 'existing users' of a crossing (IR 2.92).

18. The Secretary of State notes the Inspector's reference to the strategic case for NR's proposals under SOM4(b). Where not otherwise stated, the Secretary of State is satisfied that the Inspector has taken this matter into account in reaching his conclusion on the case for closing each level crossing.

### Equality

19. The PSED, contained in section 149 of the Equality Act 2010, sets out the requirement to have due regard to 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. The Secretary of State notes NR's approach to this issue as set out in IR 4.85-4.95 and the Inspector's view that NR has had due regard to its PSED obligations (IR 4.197). The Secretary of State further notes the Inspector's consideration of the PSED with regard to each crossing in the corresponding sections of the Report.

### **Strategic Matters**

20. The Secretary of State notes the aims of the proposed scheme set out in IR 3.3- 3.81. The Statement of Aims sets out the benefits which are sought through the Scheme, namely: creating a more efficient and reliable railway; facilitating capacity and line speed increases on the network in the future; improving the safety of level crossing users, railway staff and passengers; reducing delays to trains, pedestrians, and other highway users; and reducing the ongoing operating and maintenance costs of the railway (IR 3.161). The Secretary of State agrees with the Inspector that these benefits would arise from the scheme (IR 3.162).

21. The Secretary of State also agrees with the Inspector that the scheme accords with the National Planning Policy Framework (“NPPF”) as revised when the Inspector’s Report was submitted in July 2020. The Secretary of State notes that the NPPF was further revised in July 2021, and that the sections of the NPPF referenced by the Inspector are all also contained in the 2021 NPPF<sup>1</sup>. The Secretary of State further considers that none of the additions to the 2021 NPPF conflict with the scheme, and therefore concludes that the scheme also accords with the NPPF as revised in 2021. The Secretary of State agrees with the Inspector that the scheme accords with national and local transport and environment policy (IR 4.201). The Secretary of State is therefore content that the strategic case for this application has been satisfied.

### **Level Crossings Considerations**

22. The Secretary of State now considers the position of each level crossing to be stopped up or diverted, as set out in section 5 of the IR. Where the Secretary of State concludes that the requirements of section 5(6) of the TWA have been satisfied, namely that (a) an alternative right of way has been or will be provided; or (b) no alternative right of way is required, the Secretary of State will go on to consider other crossing specific matters. This constitutes the second stage of the process outlined in paragraph 16 above.

#### ***E01 Old Lane***

23. The Secretary of State notes that E01 Old Lane carries public footpath EX/203/13 over the railway (IR 5.1.1) and has been temporarily closed under a Temporary Traffic Regulation Order (“TTRO”), (IR 5.1.3). The Order would confer powers to permanently close the crossing to all users and extinguish existing public rights of way over the level crossing. Existing users would be diverted onto the footpath EX/185/79 to cross the railway at the Wildes level crossing. Users would then continue north of the railway on footpath EX/203/44 to rejoin footpath EX/203/13; a diversion of 150 metres (IR 5.1.5).

24. The Secretary of State notes the Inspector’s view that the extinguishment of part of footpath EX/203/13 would provide some positive impact for the landowners, whose land would no longer be encumbered by a PROW (IR 5.1.14).

25. The Secretary of State notes that whistle boards, which require trains to sound their horns when passing, have been installed at E01 due to insufficient sighting (IR 5.1.4). The Secretary of State notes a further representation received following the close of the examination from Mr O’Shea, which supported E01’s closure due to the noise reductions caused by the whistle boards’ removal.

26. The Secretary of State notes the Inspector’s view that the distance of the proposed alternative is neither excessive nor unreasonable (IR 5.1.21). He further notes the Inspector’s view that the accessibility of the proposed alternative is no more restrictive than at present (IR 5.1.22), and thus a diversity impact assessment (“DIA”) was not necessary and that the PSED has been discharged (IR 5.1.23).

---

<sup>1</sup> However, paragraph numbers for the referenced sections have, in most cases, changed. Paragraph numbers below refer to the NPPF as revised in 2021.

27. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E01 should be included in the Order as the proposed alternative is a suitable and convenient alternative route (IR 5.1.24).

### **E02 Camps**

28. The Secretary of State notes that E02 Camps carries both public footpath EX/185/75 and a private vehicular access over the railway (IR 5.2.1, 5.2.4). The Order would confer powers to close the crossing to public users and extinguish an adjacent length of footpath EX/185/75, but that private vehicular access would remain. Pedestrians heading south on footpath EX/185/75 would be diverted either east to Sadlers level crossing via the existing PROW network, or west to Wildes level crossing via a new public footpath to link with the existing PROW network (IR 5.2.4, 5.2.5).

29. The Secretary of State notes the objections to the proposal (IR 5.2.24-5.2.47) and the Inspector's conclusion that the proposals are likely to have a mixed impact on the landowner (IR 5.2.49). The Inspector considered that the extinguishment of part of footpath EX/185/75 would reduce the burden on the land associated with the footpath, but the landowners were disappointed that NR did not progress their original proposal to utilise the underpass to the east of Sadlers crossing and to close all footpaths that converge within the farmyard (IR 5.2.49).

30. The landowners and others raise further objections to the route of the new footpath, suggesting that it overlooks Roydon Lea Cottage and thus would have a detrimental impact upon the residential enjoyment and value of the property (IR 5.2.31, 5.2.37). The Secretary of State notes the Inspector's view that such impacts are unlikely to lead to a level of intrusion which could not be mitigated by additional screen planting or by the relevant compensation provisions (IR 5.2.50).

31. Objectors also raised concerns about the route of the proposed new footpath through floristically enhanced field margins subject to a Higher-Level Stewardship ("HLS") scheme, which Weldon Beesly (OBJ-133) contends is not conducive to the wildlife conservation aims of the HLS scheme (IR 5.2.29, 5.2.35). The Secretary of State notes the Inspector's view that, should the Order be made, the HLS margin may have to be moved further into the arable field with a consequential loss in the productive viability and capacity of the land and that the proposals may lead to a consequential loss from the HLS agreement. However, the Inspector's view is that such impacts could be compensated (IR 5.2.51) and that any disturbance or loss arising may form the basis for a claim for compensation (IR 5.2.56).

32. The Secretary of State notes that whistle boards are present at E02 (IR 5.2.3). The Secretary of State notes a further representation received following the close of the examination from Mr O'Shea, which supported E02's closure due to the noise reductions caused by the whistle boards' removal.

33. The Secretary of State notes the objections to the length of the alternative route (IR 5.2.25, 5.2.27, 5.2.34, 5.2.40), but also notes the Inspector's view that, given the use of E02 is mainly likely to be recreational, the increased distance of 950 metres is unlikely to inconvenience most users (IR 5.2.58).

34. The Secretary of State further notes that the proposed alternative footpath crosses the access road to a concrete crushing plant frequented by large vehicles and poses a high risk to walkers (IR 5.2.32). The Inspector concludes that the risk is similar to that of using the existing railway crossing at E02, and that good design of the crossing point can mitigate this risk (IR 5.2.59). The Secretary of State further notes the Inspector's conclusion that the proposed alternative route would not disproportionately affect those with protected characteristics and that including this crossing in the Order would not appear to lead to a likelihood that the PSED would not be met (IR 5.2.62).

35. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E02 should be included in the Order as the proposed alternative is suitable and convenient route for existing users of E02 (IR 5.2.63).

### ***E04 Parndon Mill***

36. The Secretary of State notes that E04 Parndon Mill carries public footpath EX/185/73 over the railway (IR 5.3.1). The Order would confer powers to close the crossing and extinguish an adjacent length of footpath EX/185/73 (IR 5.3.4). Existing users would be diverted by approximately 680 metres via a new public footpath to connect with the local road network, an existing segregated footway and then in the carriageway over the Parndon Mill Lane overbridge (IR 5.3.5).

37. The Secretary of State notes that there is however no trace of E04 Parndon Mill and the adjacent footpath on the ground with the physical crossing believed to have been removed in the 1950s (IR 5.3.2). As such, NR did not collect usage data (IR 5.3.3).

38. Objections were raised by the landowner, who claims there is no PROW over the land in question, which has been fenced off for 20 years with no means of crossing the railway being present (IR 5.3.17). The Inspector however noted that there is in fact a PROW across this land as shown in the definitive map and statement and that the Order, which includes its removal, would be of benefit to the landowner as it would extinguish any PROW in existence and would free the land of that burden (IR 5.3.21).

39. The Secretary of State notes that, since the application for the Order was made, the land on which the alternative footpath was proposed to be constructed has been developed for housing. The Secretary of State notes that the developer of this land raises an objection to the potential conflict between this footpath and plots 1 and 37 of the development (IR 5.3.18), though NR consider that the development would not preclude a footpath from being constructed (IR 5.3.13). The Secretary of State notes the Inspector's conclusion that, following the construction of plots 1 and 37, there remains sufficient width along this route for a footpath (IR 5.3.22). The Inspector also notes that although the full width of the five-metre working area required for the footpath construction will not be available next to plot 37 (IR 5.3.23), this should not preclude the construction of the footpath and that any disturbance arising could be addressed by the relevant compensation provisions (IR 5.3.24).

40. The Secretary of State notes the Inspector's view, that some pruning may be necessary of overhanging trees in Ram Gorse Wood but that this would be in line with Schedule 2 paragraph 3(c) of the Tree Preservation Order (IR 5.3.28). It was therefore

concluded that the proposed footpath was unlikely to have any adverse impact upon the landscape in the immediate area (IR 5.3.29).

41. The Secretary of State further notes that ramped steps may be required on the new footpath but that as there is currently no means of access to footpath EX/185/73, the Inspector considered a means of linking it with the remaining network to be suitable (IR 5.3.33) and agreed with NR that it has the potential to increase connectivity and accessibility to the network (IR 5.3.35). The Secretary of State notes that the Inspector concluded that the inclusion of E04 in the Order would not appear to lead to a likelihood that the PSED would not be met and the Secretary of State has no reason to disagree with this (IR 5.3.36).

42. The Secretary of State notes the Inspector's conclusion that the proposed alternative is suitable and convenient for those who would use the crossing (IR 5.3.37). The Secretary of State however notes that the Inspector bases his method for assessing the alternative on guidance which states that "[i]f 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" (IR 2.82). The Secretary of State notes that there is no trace of the crossing on the ground, and it is believed to have disappeared in the 1950s (IR 5.3.2) and has been unavailable for many years (IR 5.3.31). The Secretary of State has regard to the Inspector's consideration of the definition of 'existing users' as broader than the set of people currently using a crossing (IR 2.88-91), but does not consider that this extends to crossings for which there is no evidence of use nor means by which they could be used for many years, such as E04. The Secretary of State is therefore satisfied that an alternative is not required for the purposes of section 5(6) of the TWA.

43. However, the Secretary of State recognises the highway authority's position that an alternative route should be provided to retain connectivity in the network (IR 5.3.6). The provision of an alternative would also accord with paragraph 100 of the NPPF, which specifies that planning decisions should "protect and enhance public rights of way", and has the potential to improve accessibility at this location according to the DIA scoping study (IR 5.3.8). The Secretary of State considers that these factors weigh in favour of an alternative route being provided, and that these factors outweigh the concerns about the alternative route raised in paragraphs 39 and 41 above, which have been addressed by the Inspector.

44. The Secretary of State accepts the Inspector's recommendation that E04 should be included in the Order (IR 5.3.37). Taking account of the above reasoning, whilst the Secretary of State does not consider that an alternative is required under section 5(6) of the TWA, the Secretary of State welcomes the proposals for enhancing the PROW network which aligns with the NPPF and has included these in the Order. The Secretary of State concludes that, taking account of these matters, E04 should be included in the Order.

### ***E05 Fullers End***

45. The Secretary of State notes that E05 Fullers End provides a pedestrian link between Robin Hood Road and Tye Green Road (IR 5.4.1) which is accessible to users with limited mobility (IR 5.4.2). The Order would confer powers to close the crossing to all users and extinguish the existing public rights over it (IR 5.4.5). Existing users would be

diverted along new footpaths to the southwest of E05 and through an existing underpass which is not currently part of a PROW (IR 5.4.5, 5.4.6).

46. The Secretary of State notes the Inspector's conclusion that the proposed alternative would add to the journey times of utilitarian users of E05 (IR 5.4.39, 5.4.40), who are likely to use the crossing on a regular basis (IR 5.4.36). The Inspector concludes that this circuitous alternative route would be likely to inconvenience utilitarian users (IR 5.4.44).

47. The Secretary of State also notes that the Inspector raises two issues with the alternative route's accessibility to users of E05. The first issue is that, as noted in the Equality and Diversity Overview report (NR-121), the increased gradient of the proposed alternative route may restrict its use for some groups such as older people, wheelchair users, and parents with pushchairs (IR 5.4.41), and the feasibility of any solution would not be revealed until the detailed design stage (IR 5.4.38). The second issue is that NR's proposed surfacing material would likely limit the alternative route's accessibility to users with mobility impairments (IR 5.4.42). Hence it is the Inspector's conclusion that the inclusion of E05 in the Order would lead to a likelihood that the PSED would not be met (IR 5.4.43).

48. The Secretary of State further notes the Inspector's conclusion that the proposed lighting and nature of the path surface would further urbanise the landscape (IR 5.4.44).

49. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should **not** be included in the Order as the proposed alternative would not be a suitable and convenient route (IR 5.4.45).

### ***E06 Elsenham Emergency Hut***

50. The Secretary of State notes that E06 Elsenham Emergency Hut carries public footpath EX/25/32 over the railway (IR 5.5.1). It has however been closed to the public since 2013 under a TTRO (IR 5.5.3). The Order would confer powers to close the crossing to all users and to extinguish the existing PROW over it (IR 5.5.4). The Order would also confer powers to extinguish public footpath EX/25/7, which crossed the railway at Edges level crossing to the north and which was closed in 2014 (IR 5.5.7). Existing users of E06 would be diverted to cross the railway at the level crossing or stepped footbridge at Elsenham station, then along the footways of New Road and Bedwell Road. Users could continue to use footpath EX/51/14 which would lead to a new field-edge footpath connecting to footpath EX/51/24 (IR 5.5.4, 5.5.5). In addition, the initial proposal meant existing users heading to or from footpath EX/25/15 would be diverted to a new section of footpath to reduce roadside walking; this has been replaced by modified proposals (NR-157) to divert these users along a new section of footway along Old Mead Road (IR 5.5.6). It is this modified proposal in which the Secretary of State bases his conclusion on.

51. The Secretary of State notes the Inspector's consideration of objections to this proposal (IR 5.5.17-5.5.24) but notes that the objection from Mr Braeckman (OBJ-123) was withdrawn on 7 February 2019. The Secretary of State has therefore not considered this objection further.

52. The Secretary of State notes the concern of Fairfield (Elsenham) Limited (OBJ-130) that NR's proposed temporary possession of plots 15 and 16A would prejudice the timely delivery of the proposed open space and cycleway / footway link which forms part of a housing development for which OBJ-130 had submitted an outline planning application at the time of the Inquiry (IR 5.5.19-20). The Secretary of State notes the objection was maintained regarding that issue, and that OBJ-130 also objected to injurious affection and diminution of value in relation to the plots. The Secretary of State further notes that NR would require access to the plots for approximately two months to facilitate works on plot 17A (IR 5.5.14). The Secretary of State understands that OBJ-130's application for outline planning permission was granted on appeal on 22 December 2020<sup>2</sup>.

53. The timing for the two schemes was not clear during the Inquiry, but the Secretary of State consulted with NR via a letter dated 22 September 2020 on potential conflicts between the use of plots 15 and 16A by NR and Fairfield (Elsenham) Limited. NR clarified that, should the proposed path be operational before NR take temporary possession, it would be possible to maintain a 3m-wide path throughout this possession (NR's consultation response dated 6 October 2020). The Secretary of State is therefore satisfied that the proposed temporary possession would not prejudice the delivery of the development as it would be possible to maintain a path throughout, and agrees with the Inspector that it would not cause any significant adverse effect upon OBJ-130's proposals which could not be mitigated by compensation (IR 5.5.26).

54. The Secretary of State notes the Inspector's conclusion that it is unlikely the proposal would have an adverse impact on the landscape, and may have some benefit for agriculture due to the extinguishment of the cross-field footpath EX/25/7, although a burden would remain due to the creation of field-edge footpaths (IR 5.5.27, 5.5.33).

55. The Secretary of State notes the Inspector's conclusion that, despite the views of Elsenham Parish Council (IR 5.5.24), no empirical evidence had been provided to suggest users of the proposed footpath in the vicinity of the M11 motorway would be exposed to a greater risk from poor air quality from the M11 than they already experience in this area (IR 5.5.34).

56. The Inspector noted that there was no evidence to dispute NR's claim that in the past E06 was most likely to have been used for recreational purposes (IR 5.5.35) or that the proposed footpath would be unsuitable for those who used E06 before its temporary closure (IR 5.5.36). The Secretary of State notes the Inspector's conclusion that the proposal provides a suitable and convenient alternative route (IR 5.5.41). The Secretary of State further notes the objections raised to the necessity of the proposed new footpath (IR 5.5.21, 5.5.24), and the Inspector's conclusion that the proposed north-south link would maintain the connectivity provided by E06 (IR 5.5.37). The Secretary of State notes the Inspector's consideration that, although journey times and distances would be increased, the proposals would re-establish a connection in the PROW network. The Inspector concludes that the proposed diversion should introduce no disproportionality (IR 5.5.40). Having regard to this and the matters discussed in the IR, the Secretary of State

---

<sup>2</sup> This decision is available at the Planning Inspectorate's website:  
<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3243744>



considers that E06 should be included in the Order would not appear to lead to the PSED not being met.

57. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E06 should be included in the Order with the modifications shown in the filled-up Order dated 13 February 2019 (NR-190) as the proposed alternative route (as shown on Replacement Sheet 12 (NR-197)) is suitable and convenient (IR 5.5.41).

### ***E07 Ugley Lane***

58. The Secretary of State notes that E07 Ugley Lane provides a private means of access over the railway (IR 5.6.1). The Order would confer powers to close the crossing and extinguish all private rights in existence over it. Users would be diverted via the nearby public underbridge on North Hall Road (IR 5.6.5). There were no objections or representations submitted in relation to the proposal for E07 (IR 5.6.8).

59. The Secretary of State notes that that the land either side of E07 is now in fragmented ownership (IR 5.6.7) and notes the Inspector's conclusion that the extinguishment of private rights will thus have no adverse impact upon landowners (IR 5.6.9).

60. The Secretary of State notes that the alternative route is a public carriageway, and the Inspector's view that this is suitable and convenient for users of E07 (IR 5.6.15).

61. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative is suitable and convenient (IR 5.6.16).

### ***E08 Henham***

62. The Secretary of State notes that E08 Henham carries public footpath EX/55/26 over the railway (IR 5.7.1). The Order would confer powers to close the crossing to all users and extinguish an adjacent part of footpath EX/55/26, as well as powers to create two new public footpaths to provide an alternative route. Users would be diverted via these paths and the nearby M11 underpass (IR 5.7.5-5.7.8).

63. The Secretary of State notes the objection relating to the alternative route includes concerns that the route of the revised alternative footpath is likely to have adverse impacts upon grazing land (IR 5.7.20). The Secretary of State further notes the Inspector's view that these impacts could be compensated (IR 5.7.25) or mitigated by erecting fencing and suitable gates (IR 5.7.31).

64. The Secretary of State notes Mr Martineau's (OBJ-83) objection that the erection of a fence on the railway boundary would require the felling of trees or removal of branches (IR 5.7.22) but that this is considered to be addressed by NR's revised proposal (IR 5.7.23-24). On 5 October 2018, Mr Martineau withdrew his objection on the condition that trees should not be damaged when new fencing is installed.

65. The Secretary of State notes the Inspector's consideration that the alternative route would be more accessible to all users than the current crossing, given that it would

no longer require the use of steps (IR 5.7.33) or for users to walk along North Hall Road (IR 5.7.35). The Inspector further considered that the alternative route's additional length is unlikely to pose an inconvenience to recreational users, which evidence suggests is the main type of user (IR 5.7.34).

66. The new footpath on the west of the railway was initially proposed to be created as a field edge path adjacent to North Hall Road, but following representations from affected landowners, NR updated the proposal so that the route was moved to still be on the field edge but adjacent to the M11 embankment connecting to bridleway EX/51/21 near to the motorway underpass (IR 5.7.6). The Secretary of State notes that the Inspector considers that there should be no disproportionality introduced by the proposed changes and the inclusion of the crossing in the Order would not appear to lead to a likelihood of the PSED not being met (IR 5.7.37). The Secretary of State notes that NR's updated proposal therefore requires modifications to the draft Order, as outlined in the filled-up Order dated 13 February 2019 (NR-190).

67. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E08 should be included in the Order with the aforementioned modifications as the proposed alternative is suitable and convenient (IR 5.7.38).

### ***E09 Elephant***

68. The Secretary of State notes that E09 Elephant carries public footpath EX/41/14 over the railway (IR 5.8.1) and has been temporarily closed to the public since 2015 due to a 'near miss' incident (IR 5.8.3). The Order would confer powers to close the crossing to all users and extinguish an adjacent part of footpath EX/41/14, as well as powers to create a new diversionary footpath to connect with the remainder of footpath EX/41/14 (IR 5.8.4-5.8.6). Users would be diverted via this path, the overbridge on Debden Road, and the local road network. Traffic signals would be installed on the Debden Road overbridge (IR 5.8.5).

69. The Secretary of State notes that there was one supporter of the proposal, who considered the current crossing dangerous and the noise generated by the train whistles invasive (IR 5.8.20). A number of objectors raised concerns about the alternative route with regard to its safety (IR 5.8.21, 5.8.24, 5.8.27) and impact on landowners (IR 5.8.26, 5.8.28).

70. The Inspector's view is that the proposals would have adverse impacts upon two landowners (IR 5.8.32, 5.8.34), both of whose property would be crossed by the proposed diversionary footpaths. The Secretary of State further notes the Inspector's view that these impacts could be addressed by compensation (IR 5.8.32, 5.8.34). The Secretary of State has had regard to Mr Buntens' (OBJ-113) view that the diversionary footpath could be placed outside the boundary of his land (IR 5.8.26), but notes the Inspector concurred with NR's view that the proposed route would avoid potential conflicts between pedestrians and agricultural vehicles (IR 5.8.30).

71. The Secretary of State notes that the proposals would require the installation of new fencing and the clearance of vegetation, and notes the Inspector's view that this should not impact the landscape (IR 5.8.39). The Secretary of State further notes that E09's presence requires trains to sound their horns while passing, and notes the

Inspector's view that there could be benefits for local residents if E09 was closed and this requirement removed (IR 5.8.40).

72. The Secretary of State notes the Inspector's view that the proposed installation of a footway and traffic lights over the Debden Road bridge would allow users of E09 to cross the railway safely, and would improve the safety of those that currently cross the overbridge (IR 5.8.46). The Secretary of State also notes Newport Parish Council's assertion that E09 is used for recreational journeys (IR 5.8.21), and the Inspector's conclusion that the additional length imposed does not appear to be unsuitable or inconvenient for such users (IR 5.8.47, 5.8.49). The Secretary of State notes that current users of footpath EX/41/14 must cross stiles, and notes the Inspector's conclusions that the proposed alternative is likely to offer greater accessibility as stiles are unlikely to be required (IR 5.8.48), and that the inclusion of E09 in the Order does not appear to lead to a likelihood of the PSED not being met (IR 5.8.49).

73. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, as the proposed alternative would be suitable and convenient for those who would wish to use E09, and agrees that E09 should be included in the Order (IR 5.8.50).

### ***E10 Dixies***

74. The Secretary of State notes that E10 Dixies carries public footpath EX/41/7 over the railway (IR 5.9.1), and has been temporarily closed since September 2017 (IR 5.9.3) due to concerns around vulnerable users (IR 5.9.4). The Order would confer powers to formally close the crossing and extinguish an adjacent part of footpath EX/41/7 (IR 5.9.5). Users would be diverted via the local road and footpath network to the south (IR 5.9.6). NR therefore do not propose to create any new sections of PROW as NR consider that the existing highway and PROW network provide a suitable and convenient alternative (IR 5.9.5).

75. Objections were raised about the length and safety of the alternative route. In particular, the Inspector notes a number of objectors' concerns that users would not use this route, instead diverting over a shortcut via Bury Water Lane, which has no footway and no accessible verges and is therefore unsafe (IR 5.9.52).

76. The Inspector noted that Newport's population will increase over the coming years due to various projected developments, causing extra pressure on footpaths. NR considered that this would increase risk at E10, which has insufficient sighting for vulnerable users, and are seeking to address this potential increase in risk before the village population expands (IR 5.9.7, 5.9.39). The Inspector noted that whilst some objectors appear to acknowledge that increased use may increase this risk, the preferred solution for some was for a pedestrian overbridge (IR 5.9.39).

77. The Inspector considered that it was likely that E10 was used on an irregular basis for recreational purposes (IR 5.9.47) and noted the DIA's recognition that the proposed alternative route would increase the distance walked by 1,150m, which is likely to pose a problem for people who struggle to walk long distances. The proposed alternative route also includes gradients of over 5%, which could be challenging for older people, wheelchair users and parents with pushchairs (IR 5.9.55).

78. The Inspector noted that the DIA recognised that E10's closure would reduce the risk posed by the crossing for those with protected characteristics, but that the length of the alternative could impact those with protected characteristics disproportionately. The DIA suggested that alternative solutions should be considered. The Inspector considered that there was no evidence that alternatives to the closure of the crossing had been considered (IR 5.9.56).

79. The Inspector considered that the proposed alternative would restrict access for those with mobility impairments (IR 5.9.57), and that if E10 were included in the Order, there is a likelihood that the PSED would not be met (IR 5.9.58). The Secretary of State further notes the Inspector's view that whilst there would be safety benefits to E10's closure, these were outweighed by the negative impacts of the proposed alternative (IR 5.9.57).

80. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E10 should **not** be included in the Order as the proposed route would not be a suitable or convenient alternative (IR 5.9.59).

### ***E11 Windmills***

81. The Secretary of State notes that E11 Windmills carries public footpath EX/41/8 over the railway (IR 5.10.1). The Order would confer powers to close E11 and extinguish an adjacent part of footpath EX/41/8, as well as powers to create a new diversionary footpath to connect with the remaining part of footpath EX/41/8 (IR 5.10.4). Users would be diverted via this path and the local road network (IR 5.10.5).

82. There was some support for E11's closure but objections were also received regarding the need to close the crossing and concerns about the alternative route. The Secretary of State notes the Inspector's view that E11's closure would have a positive impact on the landowners across whose land footpath EX/41/8 runs (IR 5.10.21), and would be positive for agricultural land (IR 5.10.28). The Inspector however also considered that the proposed alternative would have a limited adverse impact on the land over which it would run (IR 5.10.28) but noted that there had been no objection from the affected landowner and that any adverse impact on the land could be addressed through compensation (IR 5.10.22).

83. The Secretary of State notes that E11's presence requires trains to sound their horns while passing, and the Inspector's view that some residents may regard it as a beneficial impact if this requirement was removed upon the crossing's closure (IR 5.10.29).

84. The Secretary of State notes the concern that users may be tempted to follow a section of Rookery Lane with poor sightlines rather than using the proposed alternative (IR 5.10.31). However, the Inspector considers that the proposed alternative would limit the extent of on-road walking (IR 5.10.32), maintains the east-west connectivity of the present crossing (IR 5.10.33), may be more accessible to users than the current crossing (IR 5.10.34) and is therefore a suitable and convenient alternative route (IR 5.10.36). The Inspector also concluded that the inclusion of E11 in the Order would not appear to lead to a likelihood of the PSED not being met (IR 5.10.35).

85. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E11 should be included in the Order as the proposed alternative is suitable and convenient (IR 5.10.36).

### ***E13 Littlebury Gate House***

86. The Secretary of State notes that E13 Littlebury Gate House carries public footpath EX/31/30 over the railway (IR 5.11.1). The Order would confer powers to close the crossing to all users and extinguish footpath EX/31/30, which runs over it. It would also confer powers to create two new diversionary footpaths and to downgrade the status of a connecting section of byway open to all traffic EX/31/3 to a footpath. Users would be diverted over the new diversionary footpaths and a section of Littlebury Green Road (IR 5.11.5, 5.11.6).

87. Objections were raised regarding the use of E13 and the impact of the alternative footpath on the Audley End Estate (OBJ-066), which contended that the proposal would have an adverse impact on their agricultural activities, though the Inspector considered that this could be addressed by compensation (IR 5.11.29). OBJ-066 also argued that NR land could be used to provide the alternative route, but NR contend that locating the alternative route on their land would place further constraints on the railway's operation (IR 5.11.32).

88. The Secretary of State notes the Inspector's view that E13 provides a utilitarian route between two sides of the village of Littlebury, and that the proposed alternative would be circuitous and counterintuitive and would significantly increase journey times and distances (IR 5.11.42). The Inspector considered that for most current users, the proposed alternative would be highly inconvenient (IR 5.11.42). The Secretary of State notes the outcome of the DIA (IR 5.11.44) and that, while E13's closure would reduce the risk posed by the crossing to those with protected characteristics, the risks posed by the alternative route would reduce any safety benefits (IR 5.11.45).

89. The Secretary of State also notes the Inspector's conclusion that the proposals could restrict access for those with mobility impairments and other 'non-visible' characteristics (IR 5.11.46) such that there is a likelihood the PSED would not be met if E13 were included in the Order (IR 5.11.47). The Secretary of State further notes the Inspector's view that the safety benefits of E13's closure are outweighed by the negative impacts of the proposed alternative (IR 5.11.46). The Inspector therefore considered that the benefits of its closure, including the ability for NR to raise the line speed should E13 be closed (IR 5.11.34), would not outweigh the resulting inconvenience to users (IR 5.11.48).

90. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E13 should **not** be included in the Order as the proposed alternative would not be suitable and convenient (IR 5.11.49).

### ***E15 Parsonage Lane / Margaretting***

91. The Secretary of State notes that E15 Parsonage Lane / Margaretting carries a local access road over the railway (IR 5.12.1), connecting the road network to a group of properties and providing onward connectivity to the footpath network (IR 5.12.2). The

Order would confer powers to extinguish all public rights of way over the crossing but would retain private access rights (IR 5.12.5). Existing foot users would be diverted along an existing footpath through a vehicular underpass (IR 5.12.7).

92. The Secretary of State notes that all three objectors to this proposal raised concerns that the locking of the vehicular crossing gates would impede vehicle access to their properties including emergency vehicles (IR 5.12.15, 5.12.16, 5.12.18). The Secretary of State notes that, in response to these concerns, NR has committed not to lock the vehicular crossing gates, which the Inspector considers addresses these concerns (IR 5.12.20).

93. The Secretary of State notes that the Environment Agency had anticipated that E15 would be used as part of the construction and access routes to the proposed Chelmsford Flood Alleviation Scheme as heavy goods vehicles will be required to carry material and machinery to site (IR 5.12.18). The Secretary of State further notes the Inspector's view that, should the Environment Agency seek to use E15 as part of any future flood defence works, access over it would be a matter to be negotiated with NR (IR 5.12.22).

94. The Secretary of State notes that the proposed alternative will increase journey distances by around 130m, but that as pedestrian use appears to be recreational rather than utilitarian, the Inspector considers that such an increase is unlikely to inconvenience users (IR 5.12.29). The Inspector concluded that the negative impact of longer journeys on those who struggle to walk long distances would be outweighed by the safety benefits accrued by not having to cross the railway on the level crossing (IR 5.12.30). The Secretary of State also notes the Inspector's view that use of the underpass appears adequate for use by the public and poses no safety hazards, and that further works such as installing CCTV and handrails should be considered at the detailed design stage (IR 5.12.31).

95. The Secretary of State notes that the current crossing is level and fully paved and therefore can accommodate pushchairs, wheelchairs, and mobility scooters (IR 5.12.4). The Secretary of State further notes that the Environment Agency mentioned the poor condition of the proposed alternative (IR 5.12.18) and the Inspector considered it uneven, though suitable for use by pedestrians (IR 5.12.28). The Secretary of State consulted with NR on this point via a letter dated 22 September 2020, who clarified in their response of 6 October that all onward links from the south-eastern side of the existing route require users to negotiate steps or grassy surfaces. The only locations which are therefore presently accessible to users with reduced mobility are the properties to the southeast of E15, the occupiers of which would retain private access rights over the crossing. NR therefore considers that no existing user of E15 would suffer reduced accessibility.

96. The Secretary of State notes the Inspector's conclusion that, for these reasons, the inclusion of E15 in the Order would not disproportionately affect people with protected characteristics. The inclusion of E15 in the Order (IR 5.12.32) would not appear to lead to a likelihood of the PSED not being met. The Secretary of State has no reason to disagree with this.

97. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E15 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.12.33).

### ***E16 Maldon Road***

98. The Secretary of State notes that E16 Maldon Road carries public footpath EX/226/21 over the railway (IR 5.13.1) and has been temporarily closed since 2013 due to insufficient sighting (IR 5.13.2). The Order would confer powers to close the crossing to all users to extinguish the whole of footpath EX/226/21 which runs over it (IR 5.13.5), and to construct a new diversionary public bridleway. Users would be diverted to the south over this bridleway, along the footway of Maldon Road, and then on to the B1002 (IR 5.13.6).

99. The Secretary of State notes the Inspector's view that landowners to the north of E16 would benefit from the proposal as their land will no longer be crossed by footpath EX/226/21, but that the creation of the new bridleway would have a negative impact on the landowner whose land will carry it (IR 5.13.28) and would remove a strip of land from productive use (IR 5.13.39), as well as potential negative impacts upon the occupiers of Whitesbridge Cottages who raised concerns about the bridleway's impact on security, privacy and the farmer's yield and income (IR 5.13.21, 5.13.22, 5.13.23, 5.13.35). The Secretary of State notes the Inspector's conclusion that negative impacts could be mitigated through screening and fencing at the detailed design stage (IR 5.13.34, 5.13.35) as well as compensation for the loss of agricultural land (IR 5.13.39).

100. The Secretary of State notes one key matter raised was whether an alternative route was required (IR 5.13.29). Mr Smith (OBJ-139) considered that an alternative footpath is not required, as footpath EX/226/21 currently leads to a dead end at its northern end where it terminates on the off slip of the A12 (IR 5.13.25 and IR 5.13.30). The Secretary of State however notes the Inspector's conclusion that although the off-slip road may be dangerous for pedestrians to walk along, the adjacent verge is broad and would be capable of carrying pedestrian traffic, so the extinguishment of footpath EX/226/21 would reduce the PROW network in the area (IR 5.13.31). Therefore the Inspector considers that an alternative route is required if E16 is closed and footpath EX/226/21 extinguished (IR 5.13.32).

101. The Secretary of State notes Mr Marshall's (OBJ-018) view that a bridleway would not be a like-for-like replacement (IR 5.13.21) and OBJ-139's view that a footpath should be provided instead of a bridleway (5.13.25). The Secretary of State also notes the Inspector's conclusion that the provision of a bridleway and resulting enhancement in the local rights of way network would comply with the aims of the revised NPPF (IR 5.13.33). The Secretary of State has had regard to paragraph 100 of the NPPF, which specifies that planning decisions should "protect and enhance public rights of way" and agrees with the Inspector that the creation of a bridleway is appropriate in the circumstances (IR 5.13.33).

102. The Secretary of State notes that the proposals would require removal of the crossing infrastructure and the erection and renewal of fencing to prevent trespass from the bridleway, but there will be no other impact on the landscape arising from E16's closure (IR 5.13.40). The Secretary of State further notes that if E16 were closed there

would be no requirement for trains to sound their horns while passing, and the Inspector's view that some residents may regard it as a beneficial impact if E16 was closed and this requirement was removed (IR 5.13.41).

103. The Secretary of State further notes the Inspector's view that the proposed route's increase in the length of a journey by approximately 50 metres is unlikely to inconvenience any users and there should be no disproportionality introduced by the proposed diversion (IR 5.13.45). The Inspector also concludes that, as the proposed alternative is relatively flat, it is likely to increase accessibility for users and enhance the local PROW network (IR 5.13.44). Therefore, the view of the Secretary of State is that there is no likelihood of the PSED not being met.

104. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E16 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.13.46).

### ***E17 Boreham and E18 Noakes***

105. The Secretary of State notes that E17 Boreham carries public bridleway EX/213/23 over the railway (IR 5.14.1), and has been temporarily closed since February 2016 due to deficient sighting (IR 5.14.3). The Order would confer powers to close the crossing to the public, and extinguish an adjacent stretch of bridleway EX/213/23 (IR 5.14.8).

106. The Secretary of State notes that E18 Noakes carries public footpath EX/213/24 over the railway (IR 5.14.8). E18 has been officially temporarily closed since 2013 although there is no sign of a crossing on the site and no means by which a member of the public is able to use the crossing, which is believed to have been removed after the construction of the A12 in the 1970s; this severed the link to the B1137 Main Road in Boreham village (IR 5.14.5). The Order would confer powers to close the crossing to the public, and extinguish an adjacent stretch of footpath EX/213/24 (IR 5.14.8).

107. The Secretary of State notes that the two crossings are 400m away from each other (IR 5.14.6) and were considered together by NR (IR 5.14.10). The Order would confer powers to construct a new length of bridleway and to upgrade the part of footpath EX/213/24 to create a circular link between EX/213/23 to the north of E17 to EX/213/48 to the north of E18. Part of bridleway EX/213/23 and a section of footpath EX/213/24 would be extinguished (IR 5.14.8).

108. The Secretary of State notes that both crossings historically connected to rights of way to the south of the A12, whose construction severed these links (IR 5.14.48). The Secretary of State further notes the Ramblers' (OBJ-148) and ELAF's (OBJ-142) submissions that the proposed upgrade of the A12 and a proposed new development to the west could provide an opportunity to reinstate these links (IR 5.14.23, 5.14.30). The Secretary of State agrees with the Inspector's conclusion that NR's proposals should not be delayed due to the hypothetical delivery of a means of crossing the A12 in the future (IR 5.14.48). The Secretary of State notes NR's view that the crossings' closure will not preclude the delivery of a route over the A12 in the future should these new developments provide the need for one (IR 5.14.24).



109. The Secretary of State notes the Inspector's conclusion that the proposals would remove two pedestrian crossings of the railway but would not provide any alternative means of crossing the railway at these locations or within their immediate vicinity (IR 5.14.35). The Secretary of State further notes the Inspector's conclusion that the proposed alternative route would provide additional capacity to the local public bridleway network and allow new circular rides, but that these benefits would arise as a consequence of the closure of the railway crossings which serve a different function entirely. The Inspector concludes that provision of a bridleway which does not lead to a crossing point of the railway cannot be described as being a suitable alternative route for those who would wish to use E17 and E18 if they were available (IR 5.14.50).

110. The Secretary of State notes that NR considered that, as the north-south routes which E17 and E18 carry have been unavailable for many years, it was not necessary to provide a replacement north-south route (IR 5.14.11). It is noted that the Highway Authority recognised the loss of connectivity arising from the A12 and suggested the proposal at these crossings should seek to create a circular path by way of mitigation, which NR have incorporated (IR 5.14.12).

111. The Secretary of State however notes that the Inspector bases his method for assessing the provision of an alternative route on guidance which states that "[i]f 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" (IR 2.82). The Secretary of State notes that there is no sign of a crossing on the E18 site and no means by which a member of the public is able to use the crossing; the crossing is believed to have been removed after the construction of the A12 in the 1970s (IR 5.14.5). The Secretary of State has regard to the Inspector's consideration of the definition of 'existing users' as being broader than the set of people currently using a crossing (IR 2.88-91), but does not consider that this consideration of existing users extends to a crossing, such as E18, for which there is no evidence of use nor any means by which it could be used, in addition to longstanding severance. The Ramblers acknowledge this severance from the PROW network to the south of the A12 (IR 5.14.23).

112. The Inspector noted that the proposed new bridleway will not provide a means by which the public can cross the railway at this point or an alternative means of crossing it within the immediate vicinity, and that the new bridleway would not be suitable or convenient for those users travelling north to south and that E17 and E18 should therefore not be included in the Order (IR 5.14.35, 5.14.49-51). While the Secretary of State agrees with the Inspector that the proposed new east-west bridleway will not provide a north-south route over the railway, he is satisfied that an alternative right of way is not required under section 5(6) of the TWA, given the circumstances described for E18 in paragraphs 106 and 111 above (including the lack of use and obstacles to use).

113. While the Secretary of State considers that it is not necessary for NR to provide an alternative route, he welcomes NR's approach to provide additional capacity to the local public bridleway network. This will allow local circular rides where none are currently available although this would be an entirely different function to that of E17 and E18 (IR 5.14.50). The Secretary of State considers that this weighs in favour of allowing the closure of E18, in accordance with paragraph 100 of the NPPF. The Secretary of State notes the Ramblers' (OBJ-148) request that, should the Inspector be minded to recommend the closure of the E17 and E18 crossings, then the footpaths leading up to

the crossing from the north are retained to make clear there was a historic connection point. The Inspector noted that Mr Kenning (acting on behalf of NR) saw no reason why this could not be done (IR 5.14.26). The Secretary of State accepts this and has provided for this in the Order.

114. The Secretary of State therefore concludes that the proposal for E18 should be included in the Order without the extinguishment of footpath EX/213/24. However, the factors mentioned in paragraphs 106 and 111 (including the lack of use and obstacles to use) do not all apply to E17, which is closed temporarily and for which crossing infrastructure does exist (IR 5.14.3). The Secretary of State considers that the Inspector's definition of 'existing users' (IR 2.88-91) in this case applies. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E17 should **not** be included in the Order as the proposed alternative route would not be suitable and convenient (IR 5.14.51).

### ***E19 Potters***

115. The Secretary of State notes that E19 Potters carries public footpath EX/105/43 over the railway (IR 5.15.1). The Order would confer powers to close the crossing to the public, extinguish an adjacent length of footpath EX/105/43, and construct a new diversionary footpath (IR 5.15.5). Users would be diverted to the south over this footpath, the existing footpath network, and the footway through the Oak Road underbridge (IR 5.15.6).

116. The Secretary of State notes the Siggers family and H Siggers and Son's (OBJ-173) concern about trespass on, and compulsory purchase of, their land (IR 5.15.20-22), but notes the Inspector's conclusion that the powers being sought are for temporary use of the gateway and access track for works associated with E19's closure (rather than for compulsory purchase), and that measures currently in place to combat trespass would not be affected by the works (IR 5.15.37).

117. The Secretary of State notes that, though objectors raised concerns about the diversion's length, the Inspector concludes that this is unlikely to be significantly inconvenient (IR 5.15.44). The Secretary of State further notes the Inspector's view that, despite objectors' concerns (IR 5.15.16, 5.15.24), the proposed alternative route passing through the Oak Road underbridge was safe in his experience and that there was no evidence submitted which demonstrated that using the footway would expose pedestrians to an unacceptable level of risk (IR 5.15.49).

118. The Secretary of State further notes objectors' submissions that the upcoming upgrade of the A12 would make E19's closure premature (IR 5.15.26). The Secretary of State however notes the Inspector's conclusion that, as set out in relation to E17 and E18, NR's proposals should not be delayed on the basis that a connection over the A12 may be possible at some point in the future if the road scheme is progressed (5.15.48).

119. The Secretary of State notes objectors' concerns that the proposed alternative along footpath EX/105/48 is often so waterlogged as to be impassable (IR 5.15.18, 5.15.23, 5.15.30-33). The Secretary of State further notes the Inspector's view, based on objectors' evidence and site visits, that this path is waterlogged even in dry conditions, obstructed by a significant ditch, and overgrown such that there is "very little evidence" of

the footpath on the definitive line adjacent to Rivenhall Brook (IR 5.15.45, 5.15.46). The Secretary of State also notes that the Inspector highlighted that it was unlikely NR had surveyed footpath EX/105/48 other than via maps and plans (IR 5.15.46). The Inspector concluded that, as the current route along footpath EX/105/43 is clearly located, firm and dry underfoot the proposed alternative cannot be regarded as a suitable alternative as it shares none of these characteristics (IR 5.15.47).

120. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E19 should **not** be included in the Order as the proposed alternative would not be suitable and convenient (IR 5.15.51).

### ***E20 Snivellers***

121. The Secretary of State notes that E20 Snivellers carries public bridleway EX/92/34 over the railway (IR 5.16.1). The Order would confer powers to close the crossing to the public and extinguish the PROW over the level crossing, and to construct a diversionary bridleway. Users would be diverted over this bridleway, the local road network and a nearby shared footway/cycleway (IR 5.16.5).

122. The Secretary of State notes the Inspector's view that the creation of a new public bridleway and resultant removal of agricultural land would have an adverse impact on the land over which it would run, but that any such impact could be addressed through detailed design or compensation (IR 5.16.40, 5.16.45).

123. The Secretary of State notes Royal Mail Group's ("RMG") objection to the inclusion of E20 in the Order (IR 5.16.23-25). The Secretary of State notes the Inspector's view that no evidence was submitted to detail how the closure of E20 would adversely affect RMG's operations (IR 5.16.41).

124. The Secretary of State notes Highways England's planned upgrade of the A12 and A120 near E20, with multiple objectors submitting that the closure of E20 would prevent the link being incorporated into this upgrade (IR 5.16.22, 5.16.32, 5.16.37). The Secretary of State agrees with the Inspector that NR's proposals should not be delayed due to the hypothetical delivery of a means of crossing the railway and the revised A12/A120 in the future (IR 5.16.52).

125. The Secretary of State notes the Inspector's conclusion that the alternative route would be suitable and convenient for users of E20 (IR 5.16.58). The Secretary of State notes the objection that horses and riders using the proposed alternative may be put in danger if shocked by the sudden approach of a train (IR 5.16.20), and that users would have to contend with noise and fumes when using the cycleway parallel to the A12 (IR 5.16.29). The Secretary of State further notes the Inspector's conclusion that such disturbance would not unduly inconvenience current users of E20 (IR 5.16.56), who must contend with noise while crossing the railway (IR 5.16.47) and the A12's noise and fumes when making onward journeys to the south (IR 5.16.48). The Secretary of State also notes the Inspector's conclusion that, though the alternative's increased distance may be an issue for some users, its isolated rural position and the physical condition of its approaches should not give rise to disproportionality, and therefore the PSED would be met (IR 5.16.57).

126. The Secretary of State notes objectors' concerns about the safety of the proposed alternative, especially along Cranes Lane and Crabb's lane, which have no verges (IR 5.16.27, 5.16.30). The Secretary of State further notes the Inspector's consideration that both lanes are lightly trafficked by vehicles travelling well below the posted speed limit (IR 5.16.54). The Secretary of State also notes the Inspector's view that the proposed alternative provides a link to the PROW network to the south (IR 5.16.56).

127. The Secretary of State notes that NR's updated proposals for the new bridleway, as shown on Replacement Sheet 30 (NR-105), have been modified to avoid damage to a mature tree close to the field boundary (IR 5.16.46).

128. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E20 should be included in the Order with the modifications mentioned in IR 5.16.46 as the proposed alternative would be suitable and convenient (IR 5.16.59).

### ***E21 Hill House 1***

129. The Secretary of State notes that E21 Hill House 1 carries public footpath EX/78/7 over the railway (IR 5.17.1). The Order would confer powers to close the crossing to the public, extinguish an adjacent length of footpath EX/78/7 and any other PROW between farm buildings, and create a new diversionary footpath to link byway open to all traffic EX/78/5 to the remainder of footpath EX/78/7. Users would be diverted to the north-east over this bridleway, Hill House 2 footpath level crossing, and an access road (IR 5.17.4).

130. The Secretary of State notes the objection of J R Crayston & Sons (OBJ-119), who did not dispute E21's closure but did consider that there was no case to provide an alternative path alongside the railway in the field margin and that its creation would be detrimental to wildlife and agriculture (IR 5.17.13, 5.17.14). The Inspector concluded that the proposed additional footpath would have an adverse impact on OBJ-119's landholding and on the productivity of the arable field (IR 5.17.15), but that this could be dealt with through detailed design and compensation (IR 5.17.17).

131. The Secretary of State notes the Inspector's conclusion that the proposed alternative route would be suitable and convenient for users of E21 (IR 5.17.27). The Secretary of State further notes the Inspector's view that the proposed alternative would be of a similar character to the remainder of footpath EX/78/7 (IR 5.17.23), and that its additional length of 225 metres is unlikely to inconvenience users (IR 5.17.24) and, given E21's physical condition and isolated rural location, should cause no disproportionality in its impacts, so the PSED would be met (IR 5.17.26).

132. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E21 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.17.28).

### ***E22 Great Domsey***

133. The Secretary of State notes that E22 Great Domsey carries public footpath EX/78/3 over the railway (IR 5.18.1). The Order would confer powers to close the crossing to the public and extinguish an adjacent length of footpath EX/78/3 (IR 5.18.4). The Order would also confer powers to construct a new diversionary footpath over

farmland to link to the remainder of footpath EX/78/3, and to establish a public footpath on Domsey Chase, an existing private access road (IR 5.18.5, 5.18.9). Users would be diverted over these new footpaths and the existing footway/cycleway parallel to the A12, crossing the railway at a nearby overbridge (IR 5.18.5).

134. The Secretary of State notes the objections to the proposal (IR 5.18.19-5.18.26) and the Inspector's conclusion. Inspector considered that the creation of a new footpath and resultant impact on the capacity and productivity of the agricultural land would have an adverse impact on the land over which the footpath would run, but that any such impact could be addressed by detailed design and compensation (IR 5.18.27, 5.18.30).

135. The Secretary of State notes a number of concerns were raised about the creation of a new footpath along Domsey Chase. Ms Partridge (OBJ-205) had concerns that users may step onto the privately-owned verges to avoid vehicles (IR 5.18.23, 5.18.28), but further notes the Inspector's conclusion that this could be addressed through detailed design and compensation (IR 5.18.30). The Secretary of State also notes the Inspector's conclusion that the creation of this footpath is unlikely to have a significant adverse impact on the ability on the occupants of Domsey Cottages to access their properties or for the businesses located at Great Domsey Farm to access their premises (IR 5.18.31). In response to concerns about opening up a private road (IR 5.18.22) the Inspector noted that it was not uncommon for private access roads to also be subject to a PROW and that the character and condition on Domsey Chase does not suggest that a PROW would be incompatible with its current use as a private means of access to a property (IR 5.18.31). The Inspector noted that the diversion of the footpath onto Domsey Chase would impose an additional burden on the residents of Domsey Cottages if it was necessary for works to be undertaken to services buried in the road, as local highway authority consent would be required, but was satisfied that any additional expense this process may cause for owners and occupiers of the cottages could be addressed by compensation (IR 5.18.32).

136. The Secretary of State notes concerns about the safety of users of the proposed alternative, including that its junction with the A12 could result in collisions with turning vehicles. The Secretary of State further notes the Inspector's views that such vehicles would be visibly slowing and indicating, and pedestrians could easily step onto verges to avoid vehicles, and that neither pedestrians nor vehicle users would be put at significant risk of harm by the diversion of the footpath (IR 5.18.40). The Secretary of State further notes concerns about the safety of the Domsey Chase overbridge (IR 5.18.24), but also notes the Inspector's conclusion that vehicles passing over this bridge are likely to be travelling at appropriate speeds and that pedestrians could step onto the verge on the side of the bridge if their use were to coincide with that of a vehicle (IR 5.18.41).

137. The Secretary of State notes the Inspector's view that the alternative would be of similar character and function to the current route (IR 5.18.38, 5.18.43), and that the increase in journey time and distance is unlikely to inconvenience users (IR 5.18.39) and should cause no disproportionality in its impacts, thereby not appearing to lead to a likelihood of not meeting the PSED were it included in the Order (IR 5.18.42).

138. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.18.44).

## ***E23 Long Green***

139. The Secretary of State notes that the E23 Long Green footpath was legally closed by a Rail Crossing Extinguishment Order in 2016 (IR 5.19.3). The Secretary of State further notes that the proposed Order would create a PROW over the fully accessible footbridge that replaced the extinguished footpath (IR 5.19.5). There were no objections or representations submitted in relation to the proposal for E23 (IR 5.19.6).

140. The Inspector concluded that, as the footbridge is ramped with a gradient to provide a means of crossing the railway which is accessible to all (IR 5.19.13), it would provide a suitable and convenient alternative for those who would have used E23 before its closure (IR 5.19.15) and the proposals for E23 mean the PSED would be met (IR 5.19.14).

141. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E23 should be included in the Order as it will provide a suitable and convenient alternative route to that extinguished in 2016 (IR 5.19.16).

## ***E25 Church 2***

142. The Secretary of State notes that E25 Church 2 carries public footpath EX/149/29 over the railway (IR 5.20.1) and is temporarily closed on safety grounds (IR 5.20.4). The Order would confer powers to close the crossing to the public, extinguish adjacent lengths of footpaths EX/149/29 and EX/132/11 (IR 5.20.6), and formally establish a PROW over an existing permissive footpath which is currently used as a diversion (IR 5.20.9). Users would be diverted over footpath EX/132/23, Turkey Cock Lane including its underbridge, and the permissive footpath (IR 5.20.7). There were no objections or representations submitted in relation to the proposal for E25 (IR 5.20.17).

143. The Secretary of State notes the Inspector's view that the extinguishment of footpath EX/132/11 would have a positive impact on the landowners of the land on which it runs (IR 5.20.18).

144. The Secretary of State notes the Inspector's conclusion that the proposed alternative route would be suitable and convenient for those who would use E25 if it were open and available (IR 5.20.28). The Secretary of State notes that the proposed closure would formalise the current situation for potential users (IR 5.20.9), who currently use the alternative route as there is no way to cross the A12 immediately south of E25 (IR 5.20.25). The Secretary of State notes the Inspector's conclusion that, though the alternative would increase travel distances, the lack of a crossing point of the A12 and the physical condition of E25's approaches mean its inclusion in the Order would not appear to lead to a likelihood the PSED would not be met (IR 5.20.27). The Secretary of State notes the Inspector's view that some road walking would be involved on the alternative route but it would not appear to be unsafe for pedestrians to use as traffic speeds are generally much lower than the speed limit and there are no records of accidents on this road involving pedestrians (IR 5.20.26).

145. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient for those who would wish to use E25 if it

were open (IR 5.20.28). The Secretary of State notes the conclusions made by the Inspector that taking into account all matters raised that E25 should be included in the Order (IR 5.20.29).

### ***E26 Barbara Close***

146. The Secretary of State notes that E26 Barbara Close carries public footpath EX/285/18 over the railway (IR 5.21.1). The Order would confer powers to close the crossing to the public and extinguish the PROW over footpath EX/285/18 between footpath EX/285/21 and Lesney Gardens (IR 5.21.4). Users would be diverted over the footways on the local road network and footpath EX/285/21 (IR 5.21.5).

147. The Secretary of State notes the Inspector's view that the proposals are likely to lead to less disturbance for the owners of the properties which abut footpath EX/285/18 with the cessation of members of the public using the footpath to access the crossing (IR 5.21.27).

148. The Secretary of State further notes RMG's objection to the proposals regarding the proposed diversion along Ironwell Lane (IR 5.21.19). The Secretary of State further notes the Inspector's conclusion that, as the proposed works to Ironwell Lane have already been undertaken by a third party, and as the new footway does not appear to have prevented vehicular access, the proposals are unlikely to have any adverse effect on RMG's existing vehicular use of the lane (IR 5.21.28).

149. The Secretary of State notes that the principal issue between NR and the Ramblers (OBJ-148) was the lack of provision of a new right of way (IR 5.21.29). NR argued that the existing public highway provides an alternative right of way such that section 5(6)(b) of the TWA is engaged and no new right of way is required (IR 5.21.30). The Secretary of State agrees with the Inspector that closure of E26 amounts to an extinguishment of public rights (IR 5.21.31) but notes the Inspector's conclusion that the proposals utilising existing public highways and public rights of way would in fact provide an alternative route (IR 5.21.32).

150. The Secretary of State further notes the Inspector's view that, although the proposed alternative would reduce the choice of routes available in the area (IR 5.21.47) and add distance onto some existing journeys (IR 5.21.43), it would maintain east-west connectivity and thus would be convenient for utilitarian journeys (IR 5.21.44). The Secretary of State also notes the Inspector's view that the proposed alternative is relatively flat and more accessible than the existing crossing (IR 5.21.45), and that although it requires three roads to be crossed, these road crossings have dropped kerbs and tactile paving to alert all users to the crossing points and Ironwell Lane appears to be lightly trafficked (IR 5.21.41). The Inspector concludes that, given the impediments which the use of the alternative would remove (IR 5.21.48), the inclusion of E26 in the Order would not appear to lead to a likelihood of not meeting the PSED (IR 5.21.49).

151. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E26 should be included in the Order as the proposed alternative would be a suitable and convenient alternative means of crossing the railway (IR 5.21.51).

## ***E28 Whipps Farmers***

152. The Secretary of State notes that E28 Whipps Farmers carries public footpath EX/272/178 over the railway (IR 5.22.1), alongside a private vehicular crossing (IR 5.22.4). The Order would confer powers to close the crossing and extinguish an adjacent length of footpath EX/272/178, the whole of Havering footpath 179, and the private vehicular access (IR 5.22.5). The Order would also confer powers to construct a new diversionary footpath over farmland to Warley Street, a footpath to link from Warley Street to the existing PROW network, and a new access track south of the railway to provide access from St Mary's Lane to allow the private vehicular rights over E28 to be extinguished. Foot users would be diverted over the new footpaths, Puddle Dock level crossing, and the existing footpath network (IR 5.22.6-9).

153. The Secretary of State notes the objections to this proposal (IR 5.22.38-56) and the Inspector's consideration of these.

154. The Secretary of State notes the Inspector's view that, though a private vehicular crossing is proposed to be extinguished, a new means of access would be provided and as such there would be no loss of access to landowner's property from the proposals. Private vehicular access between the north and south of the railway would become more circuitous – though this drawback for the landowner would be somewhat offset by the extinguishment of part of footpath EX/272/178 (IR 5.22.57), which would have a positive impact over the agricultural land over which it runs (IR 5.22.64). The Secretary of State further notes the Inspector's view that the proposed creation of a vehicular access track would have an adverse impact on the use of the field over which it would run, and may have an adverse impact upon the local landscape (IR 5.22.64). However the Secretary of State notes the Inspector's conclusion that there would be no impact on the landscape from the closure of E28 other than the creation of a new vehicular access, the permanent removal of the infrastructure, and the renewal and erection of fencing (IR 5.22.65). The Secretary of State further notes the Inspector's view that the negative impact of the creation of a private vehicular access would only be partly offset by the extinguishment of footpath 179 (IR 5.22.58). The Secretary of State notes the Inspector's conclusion that all these matters could be dealt with through detailed design and compensation (IR 5.22.60, 5.22.64).

155. The Secretary of State further notes that in response to concerns that the proposed alternative would subject users to traffic noise and fumes, the Inspector concluded that users already have to contend with these while making onward journeys from E28 (IR 5.22.66).

156. The Secretary of State notes the Inspector's view that E28 serves primarily a recreational function (IR 5.22.67) and that the main concerns raised about the proposed alternative related to its use of the verge along St Mary's Lane, its length, and various road crossing points (IR 5.22.68). The Inspector concluded that, given current users of E28 must use roadside verges, which does not appear to have caused past problems, their inclusion as part of the proposed alternative is unlikely to lead to future problems (IR 5.22.70). The Secretary of State further notes the Inspector's view that the increased length of the alternative would not inconvenience recreational users (IR 5.22.71).



157. With regard to the concerns about the crossing points, the Secretary of State notes that these related to road crossing points at St Mary's Lane (IR 5.22.47) and Warley Street (IR 5.22.41, 5.22.49). The Inspector concluded that, as the St Mary's Lane crossing point is currently used by the public and has adequate sightlines, its inclusion in the alternative would not be inconvenient to users who may be displaced by the closure of E28 (IR 5.22.73). The Secretary of State also notes the Inspector's acknowledgement that the Warley Street crossing point has good visibility and wide verges on which to stand (IR 5.22.74).

158. The Secretary of State notes S & J Padfield and Partners' (OBJ-155) objection to the proposed new footpath from Puddle Dock level crossing to bridleway EX/272/183 (IR 5.22.53). The Secretary of State further notes that this new path would provide a new east-west connection (IR 5.22.72), in accordance with paragraph 100 of the NPPF, which specifies that planning decisions should "protect and enhance public rights of way".

159. The Secretary of State notes the Road Safety Audit (NR-16) and Sue Tilbrook's proof of evidence (NR-31), which discuss the use of Warley Street overbridge. These detail that pedestrians would be forced to walk in the carriageway, leaving them vulnerable to high-severity injuries from collisions with fast-moving vehicles, compounded by the reduced visibility over the bridge's crest. The Secretary of State further notes the Ramblers' (OBJ-148) view that users of E28 may be likely to use this bridge, which is shorter and more direct than the proposed alternative (IR 5.22.42). The Secretary of State consulted with NR on 22 September 2020 on this point, who clarified in their response of 6 October 2020 that they consider E28 to be used infrequently for leisure purposes. As such, NR contends that users would choose to use the off-road proposed alternative due to its greater amenity value rather than the shorter route over Warley Street bridge. In their response of 6 October, NR also commit to work with the local highway authority to erect signage to show the continuation of the route across Warley Street. The Secretary of State notes this commitment and is content with NR's analysis.

160. The Secretary of State notes the Inspector's conclusion that, given E28's condition and location, its inclusion in the Order would not lead to a likelihood of not meeting the PSED (IR 5.22.77).

161. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E28 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.22.78).

### ***E29 Brown and Tawse***

162. The Secretary of State notes that E29 Brown and Tawse carries public footpath EX/313/39 over the railway (IR 5.23.1). The Order would confer powers to close the crossing, and extinguish adjacent lengths of footpath EX/311/39 and Havering footpath 4 (IR 5.23.4). The Order would also confer powers to construct three new diversionary footpaths to link the remaining parts of EX/311/39 with the Childerditch Lane overbridge. Users would be diverted over this bridge via the new footpaths (5.23.5-6).

163. The Secretary of State notes the landowner's concerns of the effects of the construction of new footpaths (IR 5.23.22) and the Inspector's conclusion that, though these footpaths would have an adverse effect on the land over which they would run (IR

5.23.47) and would reduce the productive capacity of arable land (IR 5.23.54), such issues could be dealt with through detailed design and compensation (IR 5.23.49). The Secretary of State also notes the Inspector's conclusion that the construction of steps would cause an adverse but highly localised, non-significant effect on the immediate landscape (IR 5.23.53).

164. The Secretary of State notes that E29 serves primarily a recreational function and that the main issues arising from the objections, including that of Thurrock Council, concerned the view of oncoming vehicles that pedestrians emerging at the parapets on the north-western and south-eastern sides of the bridge would have, and the suitability of steps as access to the road (IR 5.23.58). The Inspector concluded that the proposed alternative is neither suitable nor convenient for users of E29 (IR 5.23.69), noting that the design of the Childerditch Lane bridge obscures visibility (IR 5.23.62-64), meaning the Highway Code stopping distance guidelines are likely to be inappropriate in this case (IR 5.23.61). The Secretary of State notes the Inspector's conclusion that users would not be able to determine whether vehicles are approaching the crown of the bridge, creating a significant risk which is unlikely to be overcome by detailed design given that NR has discounted implementing priority working with a segregated footway (IR 5.23.69).

165. The Secretary of State further notes the Inspector's view that the proposal would reduce access for those with mobility impairments, and its inclusion in the Order is thus likely not to meet the PSED (IR 5.23.70, 5.23.71). The Secretary of State further notes the Inspector's reasoning that this reduced access would occur as the current flat route, which is open to users with a wide range of physical abilities (IR 5.23.67), would be replaced by a route which would require users to negotiate 32 steps on one side of the bridge and 30 on the other to cross the road on a blind summit (IR 5.23.68). The Inspector considered that taking all the matters into account and weighing them in the balance that there are safety and accessibility issues in relation to access over the alternative (IR 5.23.70).

166. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E29 should **not** be included in the Order as the proposed alternative would not be suitable or convenient (IR 5.23.72).

### ***E30 Ferry and E31 Brickyard Farm***

167. The Secretary of State notes that E30 Ferry carries public footpath EX/BENF/22 over the railway (IR 5.24.1), and has been temporarily shut since 2014 due to insufficient sighting of oncoming trains (IR 5.24.3). The Secretary of State notes that E31 Brickyard Farm carries public footpath EX/BENF/12 over the railway (IR 5.24.4), and was temporarily shut in 2018 due to overgrown vegetation restricting sighting (IR 24.6). The Order would confer powers to close the crossings and extinguish the footpaths over them (IR 5.24.8-9). It would also confer powers to build a new length of diversionary footpath to link the severed ends of footpaths EX/BENF/22 and EX/BENF/12 with the bridge under Benfleet station. Users would be diverted via this path and underbridge, then via the footway of Ferry Road (IR 5.24.8).

168. The Secretary of State notes the representation and objections to this proposal (IR 5.24.27-5.24.52) and the Inspector's consideration of these.

169. The Secretary of State notes the Environment Agency's concerns about the proximity of Hadleigh Ray flood barrier (OBJ-172, IR 5.24.31). The Secretary of State further notes the Inspector's view that none of the works proposed would have any adverse effect on these flood defences or any other land in which the Environment Agency had an interest, and that the proposal would not impact on flood risk (IR 5.24.57).

170. The Secretary of State notes that the railway forms the southern boundary of the Benfleet and Southend Marshes Site of Special Scientific Interest ("SSSI"), and that the new footpath is proposed to be created just outside this boundary. The Secretary of State further notes the Inspector's conclusion that the proposals are unlikely to affect the SSSI (IR 5.24.58) and that Natural England have not raised any concerns in relation to the proposal.

171. The Secretary of State notes the Inspector's conclusion that the main issues arising from the proposal relate to the length and directness of the proposed alternative path and the impact this would have on users. The Secretary of State also notes objectors' views that, if E30 were shut, E31 could provide an alternative route and that the alternative route through the car park would not be necessary (IR 5.24.40, 5.24.43). The Secretary of State however notes the Inspector's comments at IR 5.24.64 and agrees that, as the proposed route is put forward as an alternative to both crossings, the questions is whether the route is suitable and convenient for both crossings.

172. The Secretary of State notes the Inspector's view that there is no evidence that the crossings are used for utilitarian purposes (IR 5.24.69). The Inspector concluded that only some users' journeys would be made longer, depending on their origin and destination (IR 5.24.67), and that the users whose journeys would be made longer are likely to already be undertaking long journeys, so the proposed alternative's added length would not be inconvenient (IR 5.24.68). The Secretary of State further notes the Inspector's consideration that, despite the added length, the proposed alternative is more accessible to a greater number of users, given that it will be predominantly over level ground with a sealed surface (IR 5.24.65, 5.24.75) unlike the present crossings (IR 5.24.73, 5.24.74), and that its inclusion in the Order is therefore unlikely to lead to a likelihood of not meeting the PSED (IR 5.24.75).

173. The Secretary of State also notes the Inspector's conclusion that the proposed alternative would be almost entirely segregated from vehicles and thus relatively risk free and safe for users (IR 5.24.70). The Secretary of State notes objections that the proposed alternative would be more urban in character and amenity (IR 5.24.71), but also notes the Inspector's conclusion that, as routes to the crossings pass through similar environments, the proposed alternative's character would be unlikely to discourage users (IR 5.24.72).

174. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, these proposals should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.24.76).

### ***E32 Woodgrange Close***

175. The Secretary of State notes that E32 Woodgrange Close carries Southend-on-Sea public footpath 189 over the railway (IR 5.25.1). The Order would confer powers to close the crossing and extinguish the whole of footpath 189 between the A13 and

Woodgrange Close (IR 5.25.5). Users would be diverted via two routes: a level route via the footways of the local road network (1.3km), and a route with steps via a shortcut over Butterys and a section of a path corresponding to public footpath 192 (1km). Both routes would use the underbridge on Lifstan Way (IR 5.25.6, 5.25.48).

176. The Secretary of State notes that a number of objections were raised (IR 5.25.15 to 5.25.34). The Inspector concluded that the extinguishment of footpath 189 may cause some restriction upon the ability of pupils of Southend High School for Girls to access the playing fields via Pilgrims Close, but that the school appears to have a private right of access from Pilgrims Close (IR 5.25.35). The Inspector also noted that E32's closure would cause less disturbance for adjacent properties (IR 5.25.36) and that its closure would not adversely affect the ability of the owners and occupiers of the properties on Pilgrims Close to access their properties (IR 5.25.35).

177. The Secretary of State notes Objectors Steve Mulvey (OBJ 109) and Southend-on-Sea Unitary Authority (OBJ 140) suggested operational and technological alternatives to closure (IR 5.25.24, 5.25.27), but also notes the Inspector's assertion that these were not matters before the inquiry (IR 5.25.43).

178. The Secretary of State notes the Inspector's conclusions that E32 is used regularly for utilitarian purposes (IR 5.25.42), and the proposed alternative route is neither suitable nor convenient for users of E32 (IR 5.25.52). The Secretary of State further notes that the crossing forms a key route for users of the amenities in the area, particularly children accessing schools and that although the diversion would be step free, it would add 1.3km to a journey (IR 5.25.46, 5.25.49). The Secretary of State notes that the shortest diversion, corresponding to footpath 192, contains steps which limit its utility (IR 5.25.50), while E32 is not similarly restrictive (IR 5.25.47). The Secretary of State also notes the Inspector's conclusion, following the DIA (IR 5.25.44), that the proposed alternatives' additional length and steps would disproportionately impact current users of E32 who share a protected characteristic (IR 5.25.48), particularly schoolchildren (IR 5.25.49). In this context, the Secretary of State notes the Inspector's view that the proposed alternative's length is likely to limit its use by some groups who use E32 (IR 5.25.50), and as these groups include those with mobility impairments and the young, there is a likelihood that the PSED would not be met were E32 included in the Order (IR 5.25.51). The Secretary of State notes that, in reaching this conclusion, the Inspector has considered potential safety improvements for users were E32 to close (IR 5.25.51).

179. The Secretary of State notes the tragic fatalities and near misses and misuse reported at this crossing (IR 5.25.3). Noting that the crossing has a history of safety incidents, the Secretary of State agrees with the Inspector that there would be safety improvements for users not traversing the railway on the level (IR 5.25.51), but that, taking account of the above matters, this proposal should **not** be included in the Order as the proposed alternative would not be suitable or convenient (IR 5.25.52).

### ***E33 Motorbike***

180. The Secretary of State notes that E33 Motorbike carries public footpath EX/279/136 over the railway. The Order would confer powers to close the crossing, extinguish an adjacent length of footpath EX/279/136 (IR 5.26.5), and construct a new boardwalk and footpath south of the railway. Users would be diverted over this path, the

footway and level crossing on Pitsea Hall Lane, and the existing footpath network. This would require users to cross Pitsea Hall Lane twice (IR 5.26.6).

181. The Secretary of State notes the objections of Cromwell Manor Functions (OBJ 129) that the proposed boardwalk footpath and associated fencing would have a detrimental effect upon Cromwell Manor's views (IR 5.26.32) and use for clay pigeon shooting (IR 5.26.33), and that the site compound would impact its car park (IR 5.26.35), and that these would cause substantial effects on the business operated there (IR 5.26.36). The Secretary of State further notes the Inspector's conclusion that effects of the temporary use of the car park could be addressed by compensation but that the creation of the footpath would likely have significant impacts on the business which may not be possible to mitigate with compensation (IR 5.26.47).

182. The Secretary of State notes the Inspector's conclusion that the construction of the proposed fencing and boardwalk would have minor impacts on the immediate landscape (IR 5.26.52), and the proposal would be unlikely to impact flood risk (IR 5.26.50) or the Vange and Fobbing Marshes SSSI (IR 5.26.51).

183. The Secretary of State further notes objectors' concerns about the length and indirectness of the proposed alternative and its resultant impact on those with reduced mobility (IR 5.26.22-26). The Inspector concludes that the journey undertaken to access the south of the railway would be circuitous and lengthy (IR 5.26.57). For anyone approaching the crossing from the northwest and seeking to travel south, the proposed alternative would be inconvenient (IR 5.26.57).

184. The Secretary of State notes the Inspector's conclusion that users of the southern crossing of Pitsea Hall Lane travelling west to east would have limited sight of approaching traffic due to the blind bend (IR 5.26.28, 5.26.59), and that, as this stretch of road is frequented by speeding heavy goods vehicles (NR-16), this presents a significant risk to users (IR 5.26.60). The Secretary of State further notes the Inspector's conclusion that this renders the proposed alternative unsuitable (IR 5.26.59), and that this is unlikely to be overcome by detailed design as it would require works outside the scheme boundary (IR 5.26.60).

185. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, and weighing the impact upon those likely to use the crossing in the balance against matters in favour of the crossing closure, this proposal should **not** be included in the Order as the proposed alternative route would not be suitable, convenient or safe (IR 5.26.62-63).

### ***E35 Cranes No. 1***

186. The Secretary of State notes that E35 Cranes No. 1 carries public footpath EX/74/14 over the railway (IR 5.27.2). The Order would confer powers to close the crossing, extinguish the footpath over it, and create a new public footpath through the adjacent underpass used by The Notleys golf club. Users would be diverted via this path (IR 5.27.6, 5.27.7, 5.27.18).

187. The Secretary of State notes the Inspector's conclusion that public use of the underpass may have an impact on the golf club, but since the golf club made no

representations about the proposal, the Inspector concluded this is not considered to be of concern (IR 5.27.18).

188. The Secretary of State further notes the Inspector's conclusion that, although the creation of the path would require some vegetation removal, there is no indication of the vegetation including species of environmental concern and therefore the path's creation would have little or no appreciable impact upon the landscape (IR 5.27.25), and that, since the alternative uses the same field as the current path, there would be no adverse impact on agricultural land (IR 5.27.24).

189. The Secretary of State notes the objections to this crossing closure (IR 5.27.12-5.27.15), including concerns about waterlogging in the underpass (IR 5.27.12, 5.27.19). The Inspector considered that these issues could be considered during detailed design as water could be channelled into nearby drainage ditches (IR 5.27.27). The Secretary of State also notes the possibility of conflicts between footpath users and golfers waiting to use the narrow underpass, but notes the Inspector's conclusion that, given the underpass's short length, the waiting times would not be a significant hindrance (IR 5.27.28). The Secretary of State further notes concerns regarding the restricted headroom at one end of the underpass and the Inspector's conclusion that this would not be so significant as to dissuade users (IR 5.27.29), and that the short additional distance would cause no disproportionality when considered alongside E35's location and physical condition (IR 5.27.30).

190. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.27.31).

### ***E36 Cranes No. 2***

191. The Secretary of State notes that E36 Cranes No. 2 carries public footpath EX/120/8 over the railway (IR 5.28.1). The Order would confer powers to close the crossing and to extinguish adjacent lengths of footpaths EX/120/8 and EX/74/11 (IR 5.28.4). Users would be diverted via the local footpath network, passing through an underbridge to the south (IR 5.28.5).

192. The Secretary of State notes the Inspector's conclusion that the extinguishment of footpaths would remove a burden on the landowners across whose land they run (IR 5.28.14), and that, given the diversion is already a PROW, it is unlikely there would be any negative impacts on agriculture (IR 5.28.18).

193. The Secretary of State notes the objections to this proposal (IR 5.28.10-5.28.13). Regarding the concerns about journey length, the Inspector considered that, given the length of journeys users will likely be making, the alternative's increased length would not be unreasonable (IR 5.28.22). The Secretary of State also notes the Inspector's conclusion that, though the alternative route is longer, it would be more accessible than the current crossing (IR 5.28.23). The Inspector considered that E36's inclusion in the Order would not appear to lead to a likelihood of not meeting the PSED (IR 5.28.25). The Secretary of State further notes objections that the paths to be extinguished offer attractive views and woodland scenery (IR 5.28.11, 5.28.13), but that the Inspector

concluded that there would be no loss of amenity as the proposed alternative provides similar views (IR 5.28.24).

194. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.28.26).

### ***E37 Essex Way***

195. The Secretary of State notes that E37 Essex Way carries public footpath EX/120/13 over the railway (IR 5.29.1). The Order would confer powers to close the crossing, extinguish an adjacent length of footpath EX/120/13 (IR 5.29.4), and create new public footpaths passing through an underbridge to the south-east. Users would be diverted via these paths (IR 5.29.5).

196. The Secretary of State notes Mr Philpot's (OBJ-053) objection that the cross-field path would disrupt farming (IR 5.29.19), but notes the Inspector's conclusion that this would be partly offset by the extinguishment of the cross-field route to E37's north (IR 5.29.31). The Secretary of State notes OBJ-053's further concern that another part of the proposed alternative would require fencing, imposing a renewal cost upon him (IR 5.29.21); the Inspector considers that this could be dealt with through detailed design and compensation (IR 5.29.33). OBJ-053 proposed a minor amendment to the line of the path to address his concerns (IR 5.29.32).

197. The Secretary of State further notes concerns were also raised (IR 5.29.21, 5.29.25) that the alternative would be liable to flooding and waterlogging; the Inspector states that part of the proposal would lie in the floodplain of the watercourse next to it (IR 5.29.35) and considers the substitution of a path on elevated ground with one adjacent to a river and within its floodplain may introduce restrictions on its use which are not present on the current path (IR 5.29.43).

198. The Secretary of State notes the Inspector's view that the proposed alternative is likely to require some steps (IR 5.29.42), which was accepted by NR in cross-examination (IR 5.29.41), and that this may be inconvenient for some users (IR 5.29.42). The Secretary of State further notes the Inspector's conclusion that, as the potential impact of steps was not considered in the DIA, there is a likelihood the PSED would not be met if E37 were recommended for closure, which adds weight to the recommendation not to close the crossing (IR 5.29.45). Based on the information provided, the Secretary of State considers it unlikely the PSED would be met.

199. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should **not** be included in the Order as the proposed alternative route would be not suitable or convenient (IR 5.29.46).

### ***E38 Battlesbridge***

200. The Secretary of State notes that E38 Battlesbridge carries public footpath EX/229/23 over the railway (IR 5.30.1). The Order would confer powers to close the crossing and to extinguish an adjacent length of this footpath (IR 5.30.5). The Order would also confer powers to construct two new sections of footpath linking with steps to

either side of the A1245 bridge. Users would be diverted via these footpaths and bridge (IR 5.30.6-7).

201. The Secretary of State notes the Inspector's conclusion, following CJ and JN Clark's (OBJ-206) concerns (IR 5.30.48), that there would be some negative impact on those with interests in land over which the new footpath would run (IR 5.30.51), but that these could be addressed through detailed design and compensation (IR 5.30.53). The Inspector also concludes that, given that the landscape is compromised by main roads and overbridges, the construction of steps on the embankments of the A1245 is unlikely to have a significant negative impact on the landscape (IR 5.30.57).

202. The Secretary of State notes objectors' concern regarding users' exposure to noise and fumes on the bridge (IR 5.30.49), but notes the Inspector's conclusion that this is likely to be limited by the short length of the bridge and the distance from the carriageway (IR 5.30.59).

203. The Inspector noted that the principal use of the crossing was for leisure purposes and that the alternative's increased length is unlikely to represent a significant inconvenience (IR 5.30.61). The Inspector however considered that no evidence was provided to show the vehicle restraint system ("VRS") on the approaches to the bridge could be modified as proposed by NR to accommodate the new footpaths in a way that would comply with the Design Manual for Roads and Bridges standards (IR 5.30.64). The Secretary of State also notes that the crossing could not be closed until the alternative could be certified as of appropriate standard by Essex County Council in its capacity as local highway authority (IR 5.30.65). The Secretary of State further notes the Inspector's view that, after crossing the VRS, safety concerns arise from pedestrians having no protection from vehicles leaving the carriageway (IR 5.30.66-67). The Inspector considers that this would expose users to a greater risk than they currently face by using E38, and this means the alternative route is not suitable (IR 5.30.68, 5.30.71).

204. The Secretary of State further notes the Inspector's view that, whilst the VRS issue might be dealt with through detailed design, there is a significant issue with the number of steps associated with the alternative (IR 5.30.72). As users of E38 must contend with 22 steps on the current route, the Inspector considers that 120 steps on the proposed alternative would be highly inconvenient (IR 5.30.70). The Secretary of State also notes the Inspector's conclusion that, as this quantity of steps is likely to limit the accessibility of the proposed alternative to some users of E38 (IR 5.30.73), there is a likelihood that the PSED would not be met if E38 is recommended for closure (IR 5.30.70). The Secretary of State further notes the Inspector's consideration, in coming to his conclusion, of the reduced risks of an accident from the crossing itself should E38 be closed (IR 5.30.73).

205. The Secretary of State agrees with the Inspector's conclusions that, taking account of the above matters and weighing them in the balance against matters in favour of the crossing closure, this proposal should **not** be included in the Order as the proposed alternative route would not be suitable or convenient (IR 5.30.74).

### ***E41 Paget***

206. The Secretary of State notes that E41 Paget carries a pedestrian link across the railway between two disconnected parts of Paget Road (IR 5.31.1). The Order would



confer powers to close the crossing and extinguish any existing PROW over it (IR 5.31.6). The Order would also confer powers to construct a footpath including a footbridge, widen a section of footway on the High Street overbridge, and create PROWs over two private roads. Users would be diverted over two routes: an eastern route via the local road network and the Anglesea Road overbridge, and a western route via the local road network and the aforementioned footpath, private roads, and High Street overbridge (IR 5.31.7-10).

207. The Secretary of State notes the large number of objections relating to the proposal to close this crossing (IR 5.31.34-179). The Secretary of State further notes that the objection from Mr Button (OBJ-106) is discussed in the IR, though he withdrew his objection on 12 October 2017. The Secretary of State has therefore not considered this objection further.

208. The Secretary of State notes the Inspector's conclusion, following objectors' concerns, that the proposed works may cause some disruption, but that the detail of these works and any mitigation needed (bar alteration of the footway width on the High Street bridge, discussed below) could be included at the detailed design stage (IR 5.31.180-182), and that E41's closure would not prevent RMG access (IR 5.31.183).

209. The Secretary of State notes the Inspector's consideration of NR's argument that closing E41 would have direct operational benefits due to the resulting removal of the temporary speed restriction (IR 5.31.184), but notes the objectors' contentions that NR's basis for calculating sighting distances are incorrect (IR 5.31.185). The Inspector concludes that there is some merit to the objectors' arguments, that recognition of an increased sighting distance on the up line may not require whistle board mitigation, and this would have consequent effects on line speed on the down line (IR 5.31.191). The Inspector states, however, that NR's procedures are not a matter for the inquiry and he is unable to affect any change to those procedures (IR 5.31.188-192). The Secretary of State agrees.

210. The Secretary of State notes the Inspector's conclusion that there would be little impact on the landscape from fencing and vegetation removal (IR 5.31.195).

211. The Secretary of State notes the Inspector's conclusion that the proposed alternative routes would be unsuitable and inconvenient for users of E41 (IR 5.31.214). The Inspector considered that the eastern alternative has a severe gradient (IR 5.31.211), and that NR's proposed mitigation for this would be welcome but inadequate to deal with these issues (IR 5.31.203). The Secretary of State also notes the Inspector's view that, given the utilitarian nature of journeys over E41 (IR 5.31.181, 5.31.199), the increase in journey distances would be highly inconvenient (IR 5.31.210) and may disproportionately affect disabled users (IR 5.31.202).

212. The Secretary of State notes the Inspector's view that the lack of footways and uneven surface on the eastern alternative would not improve access for some groups, and may result in injuries and collisions with vehicles (IR 5.31.204). The Secretary of State further notes the Inspector's concerns over accidents with vehicles caused by the lack of footways on Alma Street, Hamilton Road and Phillip Road on the western alternative (IR 5.31.205, 5.31.206), and that this would reduce the safety benefits which older users may derive from E41's closure as pedestrians would need to walk in the

carriageway (IR 5.31.202). The Secretary of State also notes the Inspector's view that the proposed works on the High Street overbridge, i.e. widening footways and narrowing the carriageway, will not address existing shortcomings (IR 5.31.211), in particular the narrow footway on the south-east side of the bridge whose width is limited by the need for buses to turn (IR 5.31.207), thereby forcing users to step into the carriageway (IR 5.31.208). The Secretary of State notes the Inspector's concern that the need to avoid these issues would thus force users to cross the High Street twice (IR 5.31.209).

213. The Secretary of State notes the Inspector's conclusion that, given the steep gradients, uneven surfaces, and potential for contact with buses (IR 5.31.212), access would be reduced for the elderly and users with mobility impairments who can currently use E41, and that including E41 in the Order would raise the likelihood of the PSED not being met (5.31.213).

214. The Secretary of State agrees with the Inspector's conclusions that there are potential operational benefits of E41's closure (IR 5.31.214) but agrees that, taking account of the above matters, this proposal should **not** be included in the Order as the proposed alternative would not be suitable or convenient (IR 5.31.216). The Secretary of State also notes the Inspector's consideration of the matters relating to consultation (IR 5.31.215) and this is an area that NR should consider further with regard to any future applications.

### ***E43 High Elm***

215. The Secretary of State notes that E43 High Elm carries public footpath EX/157/4 over the railway (IR 5.32.1). The Order would confer powers to close the crossing, extinguish an adjacent part of footpath EX/157/4 (IR 5.32.5), and provide two new crossing points on St Osyth Road. Users would be diverted via footpath EX/157/5 and the footway on St Osyth Road, including the new crossings (IR 5.32.6).

216. The Secretary of State notes the Inspector's conclusion that the owner of the land over which footpath EX/157/4 is to be extinguished is likely to benefit from E43's closure (IR 5.32.31). The Secretary of State further notes Mrs Murton's (OBJ-099) concern around the removal of vegetation between her land and the railway boundary (IR 5.32.22), but notes the Inspector's conclusion that this could be addressed through detailed design, vegetation management or compensation (IR 5.32.31).

217. The Secretary of State notes the Inspector's view that the proposed alternative's additional length may not be significantly inconvenient for recreational users (IR 5.32.41), but that it would subject users to greatly increased noise and traffic fumes (IR 5.32.38, 5.32.43). The Secretary of State also notes objectors' concerns about loss of amenity (IR 5.32.20, 5.32.23, 5.32.30), and the Inspector's view that the proposed alternative would prevent the undertaking of short circular walks, which would be significantly inconvenient to users as it would mean that the alternative would not serve the same purpose as the route via E43 (IR 5.32.42), and this would not be mitigated by installing crossing points on the B1027 (IR 5.32.44). The Inspector notes that, while the alternative route may be more accessible than using E43 in that it would not be subject to steps and stiles, this would not offset its unsuitability or inconvenience (IR 5.32.45). The Inspector therefore concludes that whilst closure of the crossing may bring benefits to NR, those benefits are insufficient

to outweigh the inconvenience which would arise to those members of the public who currently use E43 if it were to be closed (IR 5.32.46).

218. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should **not** be included in the Order as the proposed alternative would not be suitable or convenient (IR 5.32.47).

### ***E45 Great Bentley Station and E46 Lords No. 1***

219. The Secretary of State notes that E45 Great Bentley Station carries public footpath EX/165/8 over the railway (IR 5.33.1). The Order would confer powers to close the crossing and extinguish an adjacent length of footpath EX/165/8 (IR 5.33.7).

220. The Secretary of State notes that E46 Lords No. 1 is located 300m east of Great Bentley Station and carries public footpath EX/165/12 over the railway (IR 5.33.4). The Order would confer powers to close the crossing and extinguish the whole of footpath EX/165/12 (IR 5.33.7).

221. The Order would also confer powers to construct a new footpath connecting the severed end of footpath EX/165/8 with Plough Road. Users of both crossings would be diverted via the new footpath, the existing local footpath and bridleway network, footways and verges on the local road network, and Plough Road level crossing (IR 5.33.8-9).

222. The Secretary of State notes the Inspector's view that the creation of a new footpath would likely be detrimental to the owners of the land over which it would run, especially the owners of the relevant parts of Plough Road business park (IR 5.33.36), but that any adverse impacts could be addressed by detailed design or compensation (IR 5.33.40). The Secretary of State also notes the Inspector's view that the extinguishment of two lengths of footpath would have a positive impact on the owners of the land over which they run (IR 5.33.36), and on the owners and occupiers of adjacent properties (IR 5.33.37). The Secretary of State further notes the Inspector's view that the discharge of planning conditions caused by E45's closure would benefit the developer of the land to which these planning conditions apply (IR 5.33.38); the new footpath would have no adverse impact on agriculture if the proposed development were constructed (IR 5.33.45).

223. The Secretary of State notes that the closure of E45 would have specific beneficial impacts on the railway, by facilitating the introduction of ten-car trains to the line without those trains 'sitting back' over the crossing when calling at Great Bentley (IR 5.33.41).

224. The Secretary of State notes the Inspector's comments on the Ramblers' (OBJ-148) objection that the proposed alternative would limit the village green's use as a setting-off point for organised walks (IR 5.33.48), but that he concluded that the proposed alternative would not restrict such usage (IR 5.33.49). The Secretary of State further notes the Inspector's view that the additional length on the various routes would be unlikely to cause inconvenience (IR 5.33.50). The Secretary of State also notes the Inspector's view that the proposed alternative is relatively safe, especially as the footbridge at Plough Lane crossing provides an alternative route to E45 which is segregated from vehicular traffic (IR 5.33.51). The Secretary of State further notes the Inspector's view that the proposed alternative would not diminish the quality of walks (IR 5.33.52). Finally, the Secretary of State notes the Inspector's conclusion that the

proposed alternative would be more accessible than the current crossings and so E45 and E46's inclusion in the Order would not lead to a likelihood of not meeting the PSED (IR 5.33.55).

225. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, these proposals should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.33.56).

### ***E47 Bluehouse***

226. The Secretary of State notes that E47 Bluehouse carries public footpath EX/164/16 over the railway (IR 5.34.1). The Order would confer powers to close the crossing, extinguish an adjacent part of footpath EX/164/16 (IR 5.34.4), and construct a new footpath to link to the nearby Pork Lane level crossing. Users would be diverted via this footpath, Pork Lane crossing and Pork Lane itself (IR 5.34.5).

227. The Secretary of State notes the Inspector's conclusion that the extinguishment of part of footpath EX/164/16 would remove the burden on the land over which it runs (IR 5.34.18). The Secretary of State notes Mr and Mrs Roberts' (OBJ-101) concern (IR 5.34.14) that the creation of the new path would have an adverse impact on the land over which it would run, particularly because of risks with disease transfer to livestock in the field (IR 5.34.19). The Secretary of State further notes NR's proposal for stock-proof fencing and the Inspector's conclusion that such matters can be dealt with under the detailed design and that the adverse impact on the landowner can be addressed through compensation (IR 5.34.20).

228. The Secretary of State notes that the Inspector considered that the increase in journey times was unlikely to inconvenience recreational users (IR 5.34.32). The Secretary of State further notes the Inspector's view that Pork Lane crossing is safer and more accessible than E47 (IR 5.34.33), and that the use of verges on Pork Lane is similar to the situation with which users of E47 must currently contend (IR 5.34.31). The Secretary of State further notes that the proposed alternative would maintain local links and that its added distance would not be inconvenient for users (IR 5.34.32), nor would the inclusion of this crossing in the Order lead to a likelihood that PSED would not be met (IR 5.34.34).

229. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.34.35).

### ***E48 Wheatsheaf***

230. The Secretary of State notes that E48 Wheatsheaf carries public footpath EX/184/19 over the railway (IR 5.35.1). The Order would confer powers to close the crossing, extinguish an adjacent part of footpath EX/184/19 (IR 5.35.5), and construct a new footpath. Users would be diverted via this footpath, the verges of the local road network and Church Road overbridge (IR 5.35.7-8).

231. The Secretary of State notes the Inspector's conclusions that the proposals would have no impact on the Suffolk Coast and Heaths Area of Outstanding Natural Beauty and

Wrabness Local Nature Reserve (IR 5.35.53), and that no evidence was presented to suggest an adverse impact on the landscape in general (IR 5.35.54); and the Inspector considers that the culverting of a roadside ditch is unlikely to impede water flow (IR 5.35.52).

232. The Secretary of State notes Mr and Mrs Hutley's objection (OBJ-085) that the new footpath over their land could have detrimental impacts, particularly due to fly-tipping, unauthorised access, and conflicts between pedestrians and equestrians who use the field as a gallop (IR 5.35.29, 5.35.30, 5.35.47), and notes Ms Kincaid's (OBJ-184) objection as an equestrian user. The Secretary of State further notes the change on Replacement Sheet 40 (NR-157) which moves this footpath closer to the railway boundary to lessen these impacts (IR 5.35.6), and NR's submission that mitigation measures could be considered to manage any adverse impact the footpath may have upon these permissive uses and to prevent unauthorised access (IR 5.35.48). The Secretary of State notes the Inspector's conclusion that, though this footpath's creation would affect the landowner's agricultural activity and use (IR 5.35.55), equestrian and pedestrian uses can coexist. The Secretary of State also notes the Inspector's conclusions that discussions on mitigation works can be entered into during the detailed design stage (IR 5.35.48) and that impacts could be dealt with by mitigation and compensation (IR 5.35.50). The Secretary of State further considers that issues including Andy and Gill Moffatt's (OBJ-125) concerns on the security of properties bordering the path and access to Mr Cole's (OBJ-158) soakaway (IR 5.35.21-22) could be similarly resolved.

233. The Secretary of State further notes the Inspector's view that the proposed alternative would make some users' journeys shorter (IR 5.35.59), and that for those journeys that would be made longer, the additional length would not be inconvenient (IR 5.35.59-60). The Secretary of State further notes the Inspector's view that the use of Dimbolls Hall Lane is unlikely to be unsuitable due to its current use and light traffic, although verges may need to be reprofiled subject to detailed design (IR 5.35.49, 5.35.61). The Secretary of State considers this could resolve Essex County Council's (OBJ-195) concern regarding verge banks being too high (IR 5.35.40). The Secretary of State further notes the Inspector's view that the proposed alternative is likely more accessible than E48 given its lack of steps and gates, and that inclusion of E48 in the Order would not appear to lead to a likelihood that the PSED would not be met (IR 5.35.64). The Secretary of State also notes the Inspector's view that the narrow footway and verge on Church Lane would not inconvenience current users (IR 5.35.63), and that the proposed route would maintain the availability of circular walks (IR 5.35.62).

234. The Secretary of State notes the Inspector's conclusion that it would not be necessary to extinguish the whole proposed length of footpath EX/184/19 to enact the closure, and that by not extinguishing this length of path, public access to Brakey Grove ancient woodland could be maintained (IR 5.35.67) without an adverse impact on the woodland (IR 5.35.53, 5.35.55), thereby addressing objectors' concerns (IR 5.35.37, 5.35.42). The Secretary of State agrees with this conclusion, which is included in the final Order.

235. The Secretary of State notes Mr and Mrs Hutley's claim that the time between being served notice and the objection deadline was inadequate. The Secretary of State further notes the Inspector's conclusion that, as the inquiry's adjournment allowed Mr and

Mrs Hutley adequate time to prepare, their interests were not prejudiced by this short timeframe (IR 5.35.65).

236. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order with the modifications shown on Replacement Sheet 40 (NR-157) and those proposed by the Inspector in IR 5.35.68, as the proposed alternative would be suitable and convenient (IR 5.35.66).

### ***E49 Maria Street***

237. The Secretary of State notes that E49 Maria Street carries a pedestrian link across the railway between Maria Street to the west and Ferndale Road to the east (IR 5.36.1). The Inspector also notes that the link is also used by cyclists (IR 5.36.5). The Order would confer powers to close the crossing and extinguish the PROW over it. Users would be diverted to the south via the local road network, using Alexandra Road crossing (IR 5.36.6).

238. The Secretary of State notes RMG's (OBJ-156) objection to this proposal on the grounds that its operations are sensitive to disruption to the highway network which can affect its ability to meet its statutory obligations (IR 5.36.14). The Secretary of State further notes the Inspector's view that there are no vehicle rights over E49 and that its closure would have no impact on RMG's vehicular use of adjacent streets (IR 5.36.17), and the Inspector's view that, if RMG currently parks vehicles on the areas proposed for temporary possession by NR, they could park elsewhere nearby for the duration for which NR were in temporary possession (IR 5.36.18).

239. The Secretary of State notes the Inspector's conclusion that the proposed alternative route would be suitable and convenient for users of E49 (IR 5.36.30). The Secretary of State further notes the Inspector's view that the additional length of journeys would depend on their point of origin and ultimate destination, but would be an additional length of 450 metres if current users were simply to go from one side of E49 to the other (IR 5.36.26).

240. The Secretary of State notes that E49 is ramped and fully accessible (NR-120). The Secretary of State notes the Inspector's view as initially stated in the IR that the proposed alternative route is fully accessible (IR 5.36.29) as it has dropped kerbs at road junctions which would accommodate existing users (IR 5.36.25). The Secretary of State further notes the Inspector's conclusion that E49's inclusion in the Order would therefore not lead to a likelihood of the PSED not being met (IR 5.36.28).

241. The Secretary of State has however reviewed the photograph of the proposed alternative in the DIA (NR-120) and there are no dropped kerbs visible. Noting the very high frequency of use of E49 by users with protected characteristics (IR 5.36.5, 5.36.28), the Secretary of State consulted NR on this point via a letter dated 22 September 2020. NR responded in its letter of 6 October 2020 that the footways on the approaches to Alexandra Road crossing do not in fact have dropped kerbs, so users requiring step-free access would be required to share the level crossing and its approaches with vehicles until they can rejoin the footway. NR further elaborated that access to Alexandra Road is prohibited for large vehicles, and that it does not believe that the expenditure required to install dropped kerbs is justifiable.

242. The Secretary of State wished to seek clarification on the presence of dropped kerbs, and raised this matter with the Planning Inspectorate who in turn asked the Inspector to produce an addendum to the IR. This addendum describes E49 and its proposed alternative and the differences between them. It adds to the IR by noting that the western end of E49 provides access directly onto the roadway of Maria Street, so users of E49 requiring step-free access must currently use the carriageway as the kerbs on Maria Street are raised (addendum, paragraph 9). It also notes that, while the eastern approach to E49 is accessible from both sides of the adjoining road, the eastern approach to the alternative is only accessible from the southern side of the road, and that this would therefore require users of E49 (which lies to the north of the alternative) to cross the road via dropped kerbs at road junctions (addendum, paragraph 11). The addendum acknowledged that the IR was erroneous in describing the proposed alternative as 'fully accessible', but concluded that the alternative is no less accessible than E49 as users must negotiate raised kerbs on both E49 and the proposed alternative (addendum, paragraph 12).

243. Taking NR's response and the addendum to the IR into account, the Secretary of State notes that while both E49 and the proposed alternative mean users requiring step-free access must use the carriageway to some degree, the proposed alternative would force those that require step-free access to repeatedly cross the carriageway where they do not currently do so, and then use the carriageway on Alexandra Street alongside through traffic where they must currently only use the carriageway on the Maria Street cul-de-sac. This potentially presents safety concerns greater than those present on E49, and consultation for the DIA highlighted concerns around safety in relation to the diversion (NR-120, p. 136). Though the Secretary of State notes the Inspector's statement that there is no evidence of accidents occurring between pedestrians and vehicles at Alexandra Road crossing, the Secretary of State has no evidence that the character of the proposed alternative would be safe specifically for existing users of E49, which as noted comprise a wide range of users with mobility needs (IR 5.36.11).

244. The Secretary of State notes the Inspector's recommendation that if the Secretary of State considers the PSED would not be met, then he should omit E49 from the Order (addendum, paragraph 15). The Secretary of State notes the potential risk the proposed alternative would involve, in particular for those with mobility needs. The Secretary of State concludes that the alternative would therefore not be suitable or convenient and is not satisfied that the PSED would be met if E49 was included in the Order.

245. The Secretary of State notes there were no objections regarding the safety, design, maintenance or accessibility of the proposed alternative (IR 5.36.26), beyond the general objection raised by Mr Atkins (OBJ/176) in relation to a number of level crossings in the Order. However, taking account of the above matters, the Secretary of State considers that E49 should **not** be included in the Order.

### ***E51 Thornfield Wood and E52 Golden Square***

246. The Secretary of State notes that E51 Thornfield Wood carries public footpath EX/152/11 over the railway (IR 5.37.2). The Order would confer powers to close the crossing (IR 5.37.6) and extinguish an adjacent length of footpath EX/152/11. The Order would also confer powers to create new lengths of footpath on the east and west sides of

E51, linking Jankes Green Road. Users would be diverted over these footpaths and the overbridge at Jankes Green Road (IR 5.37.7).

247. The Secretary of State further notes that E52 Golden Square carries public footpath EX/146/21 over the railway (IR 5.37.4). The Order would confer powers to close the crossing (IR 5.37.6) and extinguish the whole of footpaths EX/146/21 and EX/152/7, which extends west of E52. The Order would also confer powers to create three new lengths of footpath on the west side of E52: one to Jankes Green Road bridge to the south, one to Robert's Hill bridge to the north, and a new field-edge footpath to replace a cross-field footpath EX/152/7. Users would be diverted either southwards over the new footpath, Jankes Green Road overbridge and the local road network; or north over the new footpath, footpath EX/146/12 and the local road network. Users of footpath EX/152/7 would be diverted onto the replacement field-edge path (IR 5.37.10).

248. The Secretary of State notes that whilst there were a number of objections, none were from landowners affected by the proposals (IR 5.37.60). The Inspector concluded that the creation of the proposed PROWs would cause an adverse impact on the land over which they would run (IR 5.37.60), but that this would be mitigated by the paths running as field-edge paths and not cross-field (IR 5.37.61, 5.37.68) and the realignment of footpath EX/152/7 (IR 5.37.61). The Secretary of State further notes that adverse impacts could be addressed by detailed design and compensation (IR 5.37.63).

249. The Secretary of State notes the Inspector's conclusion that any works necessary would be unlikely to affect flood risk (IR 5.37.65), and that the proposed alternatives are unlikely to adversely impact Chalkney Wood or Arger Fen SSSIs (IR 5.37.66). The Secretary of State further notes that vegetation management at the junction between the diverted footpath EX/152/7 and Jupe's Hill is unlikely to have a significant landscape impact (IR 5.37.68).

250. The Secretary of State notes the dispute between NR and Colchester Borough Council over whether the hedgerows to the south of Jankes Green Road and west of the railway were 'important hedgerows' under the Hedgerows Regulations 1997 (IR 5.37.24-25, 5.37.42), noting that a hedge would be breached to create E51's diversion (IR 5.37.69). The Secretary of State notes the Inspector's conclusion that the Hedgerows Regulations allow removal irrespective of its importance where planning permission is granted, and that the adverse effect of this breach will be highly localised and is unlikely to be of significance in the wider landscape (IR 5.37.70).

251. The Secretary of State further notes the Inspector's view that the alternatives' additional lengths, 1.1km for E51 and 1.8km for E52, would be inconveniently long for users of these crossings (IR 5.37.76), and that they would be inconveniently circuitous as they would replace the current east-west routes with north-south ones (IR 5.37.77). The Inspector also notes the Ramblers' (OBJ-148) contention that the closure of E52 would lengthen journeys to Sergeants Orchard nature reserve (IR 5.37.67). The Secretary of State further notes the Inspector's conclusion that while the proposed alternatives would bring accessibility benefits of avoiding the stiles, steps and slopes at E51 and E52, those who find the existing routes difficult to negotiate would have to contend with the proposed alternative's limitations in terms of length, circuitousness, safety and likely need for path furniture (IR 5.37.82).



252. The Secretary of State notes objectors' concerns that road walking on the alternative routes would be unsafe, especially when compared with using E51 and E52 (IR 5.37.27, 5.37.32, 5.37.35, 5.37.38, 5.37.45-48, 5.37.55-58). The Secretary of State notes that it is acknowledged that E51 and E52 are low risk crossings (IR 5.37.81). The Secretary of State further notes the Inspector's view that the use of Jankes Green Road specifically as part of the proposed alternatives would be unsafe compared to E51 and E52, and thus unsuitable for current users of the crossings (IR 5.37.81), due to limited visibility west of the bridge (IR 5.37.78) and a lack of verges east of the bridge (IR 5.37.79) exposing users to additional risk (IR 5.37.80). The Inspector considers that only some of these issues may be able to be addressed by detailed design or appropriate mitigation (IR 5.37.62).

253. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E51 and E52 should **not** be included in the Order as the proposed alternatives would not be suitable and convenient (IR 5.37.84).

### **E54 Bures**

254. The Secretary of State notes that E54 Bures carries public footpath EX/70/30 over the railway (IR 5.38.1). The Order would confer powers to close the crossing, extinguish an adjacent length of footpath EX/70/30 (IR 5.38.4), and construct a new section of footway and a crossing point by the Station Hill underbridge. Users would be diverted via the footways on the local road network, including the Station Hill underbridge (IR 5.38.5).

255. The Secretary of State notes the Inspector's conclusion that the proposal is unlikely to have a detrimental effect on nearby landowners or businesses (IR 5.38.35), and that the owners and occupiers of properties abutting footpath EX/70/30 would experience less disturbance (IR 5.38.34). The Secretary of State further notes RMG's objections (IR 5.38.16-18), but notes the Inspector's comment that there are no private or public vehicle rights over E54 and closure would not impact upon RMG's existing vehicle use of adjacent streets. The Inspector concluded that there was no evidence E54's closure, or the construction of a footway on Station Hill, would adversely affect RMG's ability to deliver post (IR 5.38.36-37).

256. The Secretary of State notes the Inspector's conclusion that the proposals would be unlikely to adversely impact Argers Fen SSSI, Tiger Hill nature reserve, or Argers Fen nature reserve (IR 5.38.41), and that there would be no impact on the landscape beyond the erection and renewal of fencing (IR 5.38.43).

257. The Inspector states that E54 provides a utilitarian and recreational function (IR 5.38.45). The Secretary of State notes objectors' concerns around safety (IR 5.38.14, 5.38.20-21, 5.38.26-30) and the Inspector's view that the alternative route is not safe due to issues at the western side of the underbridge, where users crossing on the south-western side of the bridge would not know whether a vehicle was approaching without stepping into the carriageway (IR 5.38.51). The Secretary of State also notes the Inspector's consideration that, while E54 is not without risk to pedestrians, this risk is at the lower end. The Inspector considered that the proposed alternative is not suitable on safety grounds as the road crossing poses risks for which NR has proposed no mitigation (IR 5.38.53).

258. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E54 should **not** be included in the Order as the proposed alternative would not be suitable and convenient (IR 5.38.54).

### ***E56 Abbotts***

259. The Secretary of State notes that E56 Abbotts carries public footpath EX/158/27 over the railway (IR 5.39.1), and has been temporarily closed since around 2006 due to insufficient sighting (IR 5.39.3). The Order would confer powers to close the crossing and extinguish adjacent lengths of footpaths EX/158/27, EX/158/28 and EX/158/42 (IR 5.39.5). The Order would also confer powers to create new lengths of public footpath linking the severed ends of footpaths EX/158/27 and EX/157/28 to the Little Bromley Road overbridge and the local footpath network. Users would be diverted either via the aforementioned new paths and bridge (IR 5.39.7), or via footways on the local road network and footpath EX/158/49 (IR 5.39.6).

260. The Secretary of State notes the Inspector's view, addressing Mr Harris's (OBJ-103) objection (IR 5.39.18-19), that while some benefit would arise from the removal of part of EX/158/27, a greater burden would be imposed upon the owner of the field over which footpath EX/158/27 runs, as its diversion would be longer than the present path (IR 5.39.25). The Secretary of State also notes the Inspector's view that the replacement paths to the south-east of the railway may have land management implications (IR 5.39.26). The Secretary of State further notes the Inspector's conclusion that both these issues could be addressed by detailed design or compensation (IR 5.39.28).

261. The Secretary of State notes that the existing footpaths run over land designated as a Scheduled Ancient Monument and that one of the replacement footpaths will run over the same designated area (IR 5.39.32). The Inspector considered that this was unlikely to have an adverse impact upon the designated area and that protection for the site would be provided by a condition in the planning permission if the Order is made (IR 5.39.32).

262. The Secretary of State further notes the Inspector's consideration of the modest additional distances users would need to walk (IR 5.39.37), which are unlikely to be inconvenient (IR 5.39.38). The Secretary of State also notes the Inspector's view that the proposed alternative would retain users' ability to undertake the journeys allowed by the current paths (IR 5.39.38), and that the Little Bromley Road bridge is a safe way to cross the railway (IR 5.39.39). These were all matters raised by objectors. The Secretary of State notes the Inspector's conclusion that E56's inclusion in the Order would not appear to lead to a likelihood of the PSED not being met (IR 5.39.40).

263. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, E56 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.39.42).

### ***H01 Trinity Lane***

264. The Secretary of State notes that H01 Trinity Lane carries a public road over the railway (IR 5.40.1). The Order would confer powers to downgrade the public vehicle crossing by extinguishing public vehicular rights over the crossing and the section of

Trinity Lane to the east, and create a public bridleway over the crossing and this section of road (IR 5.40.6). NR intends to grant a licence to the owner of the allotments (Broxbourne Borough Council) whose invitees (the allotment holders) will be able to cross the railway under the crossing keeper's supervision (IR 5.40.10). Cyclists and pedestrians would be able to use the nearby stepped footbridge or use H01 under the crossing keeper's control (IR 5.40.7).

265. The Secretary of State notes the Inspector's conclusion that, as article 26(3) of the Order retains private vehicular access over H01, no landowners of land to the east of the railway, or their invitees, would experience adverse impacts (IR 5.40.18).

266. The Secretary of State notes the Inspector's conclusion that the proposals would be unlikely to adversely impact the neighbouring Lee Valley Ramsar site, Lee Valley Special Protection Area or Turnford and Cheshunt Pits SSSI (IR 5.40.22).

267. The Secretary of State notes the Inspector's conclusion that no alternative route is required (IR 5.40.29). The Secretary of State notes objections about the footbridge's inaccessibility (IR 5.40.13, 5.40.16, 5.40.17), but that the Inspector asserts that use of this bridge would be optional as the proposed bridleway will maintain current access for pedestrian users (IR 5.40.25, 5.40.26). The Inspector concluded that inclusion of H01 in the Order would not appear to lead to a likelihood that PSED would not be met (5.40.28).

268. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, H01 should be included in the Order as no alternative is required (IR 5.40.29).

## ***H02 Cadmore Lane***

269. The Secretary of State notes that H02 Cadmore Lane carries Cheshunt public footpath 9 over the railway (IR 5.41.1), and has been physically closed since 2014 when an adjacent fully accessible non-motorised user bridge was constructed (IR 5.41.3). The Order would confer powers to formally close the crossing, extinguish the PROW over it, and create a PROW over the bridge over which users would be diverted (IR 5.41.4). The Secretary of State further notes that both objections to this proposal were withdrawn before the inquiry opened (IR 5.41.8).

270. The Secretary of State notes the Inspector's conclusion that, as the bridge is extant, there would be no impact on the neighbouring Lee Valley Ramsar site or the Turnford and Cheshunt Pits SSSI (IR 5.41.13), nor would the proposal affect those with an interest in land (IR 5.41.9).

271. The Secretary of State notes the Inspector's conclusion that the footbridge is ramped with an accessible gradient (IR 5.41.16), and would therefore provide a suitable and convenient alternative for those who used H02 (IR 5.41.18) and that H02's inclusion in the Order would not lead to a likelihood that the PSED would not be met (IR 5.41.17).

272. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, H02 should be included in the Order as the existing bridge is a suitable and convenient alternative (IR 5.41.19).

## ***H04 Tednambury***

273. The Secretary of State notes that H04 Tednambury carries Sawbridgeworth public footpath 3 over the railway (IR 5.42.1). The Order would confer powers to close the crossing and extinguish an adjacent length of footpath 3 (IR 5.42.4). The Order would also confer powers to create two diversionary footpaths, and to establish a PROW over the bridge and a section of the private access road to Tednambury. Users would be diverted over these footpaths and bridge (IR 5.42.5).

274. The Inspector noted Mr Edmonston's (OBJ-128) contention that the proposed alternative would diminish the privacy and security enjoyed at his property (IR 5.42.20). The Secretary of State further notes that Mr Edmonston (OBJ-128) has proposed an alternative route ("Mr Edmonston's alternative") to mitigate this on Replacement Sheet 08 dated 7 September 2018 (OBJ-128-1), which other interested parties have not opposed (OBJ-128-2). The Secretary of State notes the Inspector's consideration of Mr Edmonston's alternative (IR 5.42.31-35) and agrees with the Inspector that this alternative route should be included in the Order (IR 5.42.37).

275. The Secretary of State notes the Inspector's conclusion that any disturbance or loss, and any adverse impacts on agriculture, could be addressed by detailed design, compensation, and Mr Edmonston's alternative (IR 5.42.21, 5.42.26).

276. The Secretary of State notes the Inspector's view that Mr Edmonston's alternative, in contrast to that proposed by NR, would not require the construction of a footbridge over a drain and would have no more interaction with flood risk areas than the current footpath (IR 5.42.23). The Secretary of State notes the Inspector's conclusion that this is a further advantage of Mr Edmonston's alternative (IR 5.42.34).

277. The Secretary of State notes the Inspector's conclusion that, though H04 lies 110m from Little Hallingbury Marsh SSSI, there is no evidence to suggest its closure would have any adverse effect on the SSSI (IR 5.42.25). The Secretary of State further notes the Inspector's view that, though the proposed fencing would somewhat urbanise the landscape, this impact could be reduced through detailed design and choice of materials (IR 5.42.27). The Secretary of State also notes the Inspector's view that H04's closure would address Oram Court Residents' (SUPP-06) concerns about train horn noise by removing the need for whistle boards (IR 5.42.28).

278. The Secretary of State notes the Inspector's conclusion that Mr Edmonston's alternative would be suitable and convenient for users of H04 (IR 5.42.34). The Secretary of State further notes the Inspector's view that the added length of 215 metres would neither inconvenience users (IR 5.42.29), nor, given H04's condition and location, would its inclusion in the Order appear to lead to a likelihood that the PSED would not be met (IR 5.42.35). The Secretary of State also notes the Inspector's view that, as Mr Edmonston's alternative would run over similar terrain and likely require stiles, accessibility would be little improved (IR 5.42.30), but that, as Mr Edmonston's alternative maintains east-west access and links to the PROW network, accessibility would also not be diminished (IR 5.42.32). The Inspector also considered that, though Mr Edmonston's alternative appears counter-intuitive compared to NR's, no concerns were raised on this (IR 5.42.33).

279. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, H04 should be included in the Order with the modifications shown on replacement sheet 08 dated 7 September 2018 (OBJ-128-2) as this alternative would be suitable and convenient (IR 5.42.36). The Secretary of State has modified the Order accordingly to reflect this.

### ***H05 Pattens, H06 Gilston and H09 Fowlers***

280. The Secretary of State notes that H05 Pattens carries Thorley public footpath 22 over the railway (IR 5.43.3). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 22 (IR 5.43.9).

281. The Secretary of State notes that H06 Gilston carries Thorley public footpath 7 over the railway (IR 5.43.5). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 7 (IR 5.43.12).

282. The Secretary of State notes that H09 Fowlers carries a private vehicular access over the railway (IR 5.43.7) used by Mr and Mrs Carpenter, the owners of land to the railway's east (IR 5.43.36). The Order would confer powers to close and remove all private rights over the crossing (IR 5.43.16).

283. The Order would also confer powers to create a number of new lengths of footpath converging on an existing underpass. Users of all three crossings would be diverted via this underpass (IR 5.43.10, 5.43.13), with private rights for smaller vehicles being created through it (IR 5.43.16). Users of H06 would also be diverted via Thorley public footpath 5 to the north (IR 5.43.14).

284. The Secretary of State notes the Inspector's conclusion that the land over which H05 and H06's proposed alternatives would run would be burdened more than at present (IR 5.43.52). The Secretary of State further notes objectors' concerns about the suitability of the bridge over Thorley Marsh Ditch, and path and bridge maintenance obligations (IR 5.43.33-34, 5.43.37), but notes the Inspector's conclusion that the condition of the path surface and bridge would need to satisfy the Highway Authority before the crossings' closure, and that any other impacts in this respect could be addressed through detailed design or compensation (IR 5.43.53).

285. The Secretary of State notes the Inspector's conclusion that, though the proposed alternative for users of H05 through Thorley Flood Pound SSSI would follow existing paths and tracks and the environmental impact assessment screening report concludes the proposals would have minimal impact on the SSSI, increased footfall is likely to disturb water vole (IR 5.43.57). The Secretary of State further notes Herts and Middlesex Wildlife Trust's ("HMWT") objection that H09's closure would disrupt their management of the SSSI (IR 5.43.31-32), but notes the Inspector's conclusion that, as HMWT do not have a private right of way over H09, they would have to make alternative access arrangements to manage the site if the crossing were closed (IR 5.43.58).

286. The Secretary of State notes that the Inspector's conclusion on the flood risk of the proposed alternative for H05, in light of the issue being raised by objectors (IR 5.43.30, 5.43.42-45), is that it would cross land no more prone to flooding than the current route (IR 5.43.56), nor would it contribute to flood risk (IR 5.43.55). The Secretary of State

notes the Inspector's view that, though the underpass diversion sits between flood zones 2 and 3, this would be no different from the current route of footpath 22 and users would thus already be aware of the potential for flooding on the route (IR 5.43.68).

287. The Secretary of State further notes the Inspector's view that H05's proposed alternative would be circuitous, lengthy and counter-intuitive (IR. 5.43.70). The Secretary of State notes Mr and Mrs Carpenter's (OBJ-162) objection that the closure of H09, and the inadequate headroom of the underpass diversion, would sever their landholdings (IR 5.43.36). The Inspector concludes that it is unclear whether the Carpenters would be able to continue managing their land to the railway's east were H09 to be closed, so the proposed alternative cannot be considered suitable and convenient (IR 5.43.51). The Secretary of State further notes the Inspector's view that the restricted headroom of the underpass, through which Mr and Mrs Carpenter would be granted a private vehicular right, would impede access (IR 5.43.50), and that, as no detail was provided as to what machinery Mr and Mrs Carpenter used, there was nothing to substantiate NR's claim that this machinery would fit through the underpass (IR 5.43.51).

288. The Secretary of State notes the Inspector's conclusion that, for the reasons outlined above, the proposals for H05 and H09 should not be included in the Order (IR 5.43.73). Henceforth, only those parts of the Inspector's conclusions pertaining to H06 will be discussed.

289. The Secretary of State notes the Inspector's conclusions on the suitability and convenience of the underpass for walkers, including that the increased length would be unlikely to inconvenience users of H06 (IR 5.43.63), and that, given the short length of the underpass, its restricted headroom would not be a significant inconvenience (IR 5.43.67), addressing objectors' concerns (IR 5.43.30, 5.43.47-49). The Secretary of State further notes the Inspector's consideration that the precise eventual clearance would depend on the nature of protective mesh to be installed under the bridge, to be determined at the detailed design stage (IR 5.43.66).

290. The Secretary of State notes the Inspector's view that, though the proposed fencing at the railway boundary would somewhat urbanise the landscape, this impact could be mitigated through design and choice of materials (IR 5.43.60).

291. The Secretary of State notes the Inspector's conclusion that the proposed alternative route via Thorley footpath 5 would be suitable and convenient for users of H06 (IR 5.43.72), and that its increased journey distance is unlikely to be inconvenient for users of the existing footpath (IR 5.43.63) and would be unlikely to disproportionately affect any group of users (IR 5.43.71).

292. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, H06 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.43.72), but H05 and H09 should **not** be included in the Order as the proposed alternatives would not be suitable and convenient (IR 5.43.73).

293. The Secretary of State notes that, as users of H06 are provided with a suitable and convenient alternative via footpath 5 and the underpass, the proposed alternative through Thorley Flood Pound SSSI is not required and therefore agrees with the Inspector that it

can be removed from the Order (the footpath between points P051, P053 and P054 listed in IR 14.4), eliminating the aforementioned problems with this route.

### ***H08 Johnsons***

294. The Secretary of State notes that H08 Johnsons carries Bishop's Stortford public footpath 60 over the railway (IR 5.44.1), and has been physically closed since 2014 when an adjacent fully accessible footbridge was constructed (IR 5.44.3). The Order would confer powers to formally close the crossing, extinguish the PROW over it, and create a PROW over the bridge (IR 5.44.4). Users would be diverted over this bridge (IR 5.44.5). The Secretary of State notes that there were no objections or representations to the proposal for H08 (IR 5.44.7).

295. The Secretary of State notes the Inspector's conclusion that the footbridge is ramped with an accessible gradient (IR 5.44.14), and would therefore provide a suitable and convenient alternative for those who would have used H02 before its closure (IR 5.44.16).

296. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the footbridge is a suitable and convenient alternative (IR 5.44.17).

### ***HA1 Butts Lane***

297. The Secretary of State notes that HA1 Butts Lane carries Havering public footpath 170 over the railway (IR 5.45.1). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 170 (IR 5.45.4). Users would be diverted over the remainder of footpath 170, the footways on the local road network, and a nearby footbridge over the railway (IR 5.45.5).

298. The Secretary of State notes the Inspector's view that the proposals are likely to lead to less disturbance for the owners of the properties which abut the part of footpath 170 to be extinguished (IR 5.45.15). The Secretary of State also notes the Inspector's view that HA1's closure was unlikely to have any impact upon Hornchurch Cutting SSSI, which the crossing borders (IR 5.45.18).

299. The Secretary of State notes Mr Atkins' (OBJ-176) objection to the alternative's length and safety (IR 5.45.13), but further notes the Inspector's conclusions that the evidence suggests HA1 serves a utilitarian function, that many journeys' additional length would be unlikely to be inconvenient to users depending on their origins and destinations (IR 5.45.24), and that the alternative is safe as users would be separated from vehicles at all times (IR 5.45.23). The Secretary of State further notes the Inspector's conclusion that including HA1 in the Order would not appear to lead to a likelihood that the PSED would not be met, as the alternative's increased distance would not give rise to disproportionality taking into account the physical condition of HA1's approaches (IR 5.45.26), and that the proposed alternative's footways and footbridge are large, level and of a low enough gradient to accommodate a wide range of people (IR 5.45.25).

300. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, HA1 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.45.28).

### ***HA2 Woodhall Crescent***

301. The Secretary of State notes that HA2 Woodhall Crescent carries Havering public footpath 172 over the railway (IR 5.46.1). The Order would confer powers to close the crossing and extinguish the whole of footpath 172 (IR 5.46.4). Users would be diverted over the footways of the local road network and the footbridge parallel to Wingletye Lane (IR 5.46.5).

302. The Secretary of State notes the Inspector's conclusion that the owners of properties next to footpath 172 would experience less disturbance were it to be extinguished (IR 5.46.15).

303. The Secretary of State further notes the Inspector's consideration of Natural England's (REP-04) assertion that HA2's closure is not likely to significantly affect the geological features for which Hornchurch Cutting SSSI, in which the crossing lies, was designated (IR 5.46.18). The Inspector also concludes that the erection of fencing would have no adverse impact on the landscape given its urbanised nature (IR 5.46.20).

304. The Secretary of State notes Mr Atkins' (OBJ-176) objection to the alternative's length and safety (IR 5.46.13), but further notes the Inspector's conclusions that the evidence suggests HA2 serves a utilitarian function, that many journeys' additional length would be unlikely to be inconvenient to users depending on their origins and destinations (IR 5.46.23), and that the alternative is safe as users would be separated from vehicles at all times (IR 5.46.22). The Secretary of State further notes the Inspector's conclusion that including HA2 in the Order would not appear to lead to a likelihood that the PSED would not be met, as the alternative's increased distance would not give rise to disproportionality taking into account the physical condition of HA2's approaches (IR 5.46.25), and that the proposed alternative's footways and footbridge are large, level and of a low enough gradient to accommodate a wide range of people (IR 5.46.24). The Inspector noted that although closure of HA2 would deprive users of a choice, they would not be inconvenienced by the closure (IR 5.46.26).

305. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, HA2 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.46.27).

### ***HA3 Manor Farm and HA4 Eve's***

306. The Secretary of State notes that HA3 Manor Farm carries Havering public footpath 251 over the railway (IR 5.47.1) although the crossing has not been accessible since the M25 was constructed and there is no sign of a crossing on the site, nor any sign of use of the path leading to the crossing (IR 5.47.2). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 251 (IR 5.47.6).



307. The Secretary of State notes that HA4 Eve's carries Havering public footpath 252 over the railway (IR 5.47.3). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 252 (IR 5.47.7).

308. The Order would also confer powers to create four new sections of footpath in nearby field margins. Users of both crossings would be diverted over two of these paths, the carriageway of Ockendon Road overbridge, the local footpath network and the footway on Ockendon Road. Users of HA4 would also use the two other new paths, the remainder of footpath 251, and the footway on Dennis Road (IR 5.47.8).

309. The Secretary of State notes the Inspector's conclusion that the proposed alternative route would lessen the burden on the land over which footpath 252 runs (IR 5.47.35). The Secretary of State however notes Mr Mee's (OBJ-013) concerns about the security of his land over which the new footpath would cross (IR 5.47.22). In addressing this, the Inspector concludes that detailed design of access and egress points may mitigate some of these concerns, and that the impacts of PROW creation may be addressed by detailed design and compensation (IR 5.47.36).

310. The Secretary of State notes the Inspector's conclusion that the proposed footpaths would adversely impact agriculture, but that disruption to the land's productive capacity would be minimised by the footpaths' location at field edges (IR 5.47.40). The Secretary of State further notes the Inspector's conclusion that the footpaths would be unsurfaced and are unlikely to have any significant impact upon the landscape (IR 5.47.41), and that there would be no further landscape impacts beyond those caused by removing the pedestrian crossing infrastructure and erecting fencing (IR 5.47.42).

311. The Secretary of State notes the Inspector's conclusion that the proposed alternative route would not be suitable and convenient for existing users of HA4 and HA3 (IR 5.47.53; note the Secretary of State's consideration of this at paragraph 315 below). The Secretary of State further notes the Inspector's view, concurring with objectors (IR 5.47.21, 5.47.24-30, 5.47.33) that the proposals for use of the Ockendon Road bridge would be unsafe (IR 5.47.52), as pedestrians using the bridge would have to walk in the road facing oncoming traffic under limited visibility (IR 5.47.47) on a road where vehicles regularly exceed speed limits (IR 5.47.49). The Secretary of State further notes that walkers would either have to lean out or step out into the road to tell if a car was coming (IR 5.47.48), a situation which the Inspector describes as "inherently unsafe" for pedestrians, particularly as vehicles exceed the speed limit (IR 5.47.49). The Inspector also highlighted that the Road Safety Audit recommended a footway be constructed on the bridge, but that no such provision to segregate pedestrians from vehicles is included in the proposal (IR 5.47.46, 5.47.49).

312. The Secretary of State also notes the Inspector's conclusion that users of HA4 would find the proposed alternative convoluted and counter-intuitive and therefore inconvenient in addition to the route being unsafe (IR 5.47.50). The Secretary of State further notes the Inspector's conclusion that the proposed alternative's limitations would affect those with protected characteristics to the same extent as the rest of the population (IR 5.47.51).

313. The Secretary of State however notes that the Inspector bases his method for assessing the alternative on guidance which states that "[i]f 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". The Secretary of State has regard to the Inspector's consideration of the definition of 'existing users' as broader than the set of people currently using a crossing (IR 2.88-91), but does not consider that this extends to crossings for which there is no evidence of use, such as HA3. The Secretary of State in coming to this conclusion notes that there is no crossing infrastructure present and no evidence of use of the footpath leading to HA3 (IR 5.47.2) and that it has been presumed to be inaccessible since 1982 (NR-26, p. 179). Indeed, the Inspector describes its formal closure as regularising the current situation (IR 5.47.6).

314. The Secretary of State therefore is satisfied that the provision of an alternative right of way is not required, as per section 5(6) of the TWA. While the Secretary of State would welcome the provision of an alternative PROW, the Inspector's conclusion is that NR's proposal is unsafe (IR 5.47.52) and no safer proposed alternative has been suggested. The Secretary of State is therefore content for no alternative to be provided in this case, as the benefits of enhancing the PROW network would be outweighed by the safety risks to which users of the proposed alternative would be subject.

315. The Secretary of State therefore concludes that the closure of HA3 (and the extinguishment of the portion of footpath 251 which runs over it) should be included in the Order as no alternative is required. However, the Secretary of State agrees with the Inspector's conclusions that, taking account of the above matters, the proposal for HA4 should **not** be included in the Order as it would not provide a suitable and convenient alternative (IR 5.47.53).

### ***T01 No. 131***

316. The Secretary of State notes that T01 No. 131 carries Thurrock public footpath 145 over the railway (IR 5.48.1). The Order would confer powers to close the crossing, extinguish an adjacent part of footpath 145, and reroute part of footpath 145 to the east of the Arterial Road to replace a section liable to flooding (IR 5.48.5). Users would be diverted over this footpath and the footways of the local road network (IR 5.48.6).

317. The Secretary of State notes the Inspector's conclusion that any disturbance or loss caused by the new footpath can be addressed through compensation, but that the route as shown on Replacement Sheet 52 has been designed to address the concerns of the owners and occupiers of the land (IR 5.48.24); The Secretary of State also notes the Inspector's conclusion that the extinguishment of footpath 145 to the west of the Arterial Road would lift the burden on the land over which it runs (IR 5.48.25), but that there would be limited impacts on agricultural land due to the diversion of footpath 145 (IR 5.48.30).

318. The Secretary of State notes the Inspector's conclusion that the removal of footpath 145 under the High Speed 1 line is unlikely to have any material effect on the flooding which occurs there (IR 5.48.27). The Secretary of State further notes the Inspector's view that whether or not the underpass had been deliberately created to accommodate footpath 145 as part of High Speed 1 is not a matter for determination (IR 5.48.28).

319. The Secretary of State notes the Inspector's conclusion that T01's closure, and the proposed alternative, would have no adverse impact on the Rainham Marshes RSPB site (IR 5.48.29), and that erecting fencing would not materially impact the semi-urban landscape (IR 5.48.31). The Secretary of State understands that T01's closure would remove the need for whistle boards (IR 5.48.4), reducing train noise.

320. The Secretary of State notes the Inspector considered that the main issues between parties were the alternative route's length and its character compared with the current route (IR 5.48.33).

321. The Secretary of State notes the Inspector's view, following the Ramblers' objection (OBJ-148, IR 5.48.18), that, while the current route has a rural ambience (IR 5.48.34), the proposed alternative involved walking alongside large stationary vehicles with a nearby hedgerow strewn with litter, due to the verge serving as a lorry and trailer lay-by (IR 5.48.35). The Inspector also noted that pedestrians were also subjected to road noise and exhaust fumes (IR 5.48.32). Since receiving the Inspector's Report, the Secretary of State has become aware that the lay-by has been removed following works undertaken by Thurrock Council under Traffic Regulation No. 48 Order 2019. The removal of the lay-by means users will no longer have to walk alongside large stationary vehicles. The Secretary of State notes the Inspector's conclusion that section 5(6) of the TWA is concerned with whether the proposed alternative would perform the same function as the existing route, rather than being concerned with the route's ambience (IR 5.48.40), and that for the purposes of section 5(6) of the TWA, the alternative route is suitable and would serve the same purpose as footpath 145 (IR 5.48.41).

322. The Secretary of State notes that there would be an increase in journey time (IR 5.48.37) but that the proposed means of crossing Arterial Road would be safer than the current one (IR 5.48.36) removing the need to cross the railway at grade at a point where there is insufficient sighting (IR 5.48.38). The Secretary of State notes the Inspector's conclusions that, given the safety benefits, the route would be convenient despite this increased length (IR 5.48.41), and that, whilst the increase length might be an issue for some people, given the existing route's location and condition, including T01 in the Order would not appear to lead to a likelihood that PSED would not be met (IR 5.48.42).

323. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, this proposal should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.48.43).

#### ***T04 Jefferies***

324. The Secretary of State notes that T04 Jefferies carries Thurrock public footpath 32 over the railway (IR 5.49.1). The Order would confer powers to close the crossing and extinguish an adjacent part of footpath 32 (IR 5.49.5). The Order would also confer powers to create a footpath along the railway's eastern side, steps on either side of the Manorway overbridge, and two footpaths on the railway's western side, one connecting to the severed end of footpath 32, the other connecting to footpath 36. Users would be diverted over these paths and the verge of the Manorway overbridge (IR 5.49.6, 5.49.8, 5.49.49).

325. The Secretary of State notes the Inspector's conclusion that the new footpath would impact the land over which it would run, that this would not be mitigated by the removal of a section of cross-field path, and that this would affect the productive capacity of this agricultural land (IR 5.49.42, 5.49.47), but that these adverse impacts could be mitigated by detailed design and compensation (IR 5.49.43).

326. The Secretary of State notes the Inspector's conclusion that the proposed alternative would have no adverse impact on Langdon Hills SSSI or Grove House Wood nature reserve nor on any of the features for which they have been designated (IR 5.49.46) and that erecting railway boundary fencing would not materially impact the semi-urban landscape (IR 5.49.48).

327. The Secretary of State notes the Inspector's conclusion, following objections (IR 5.49.39), that the noise level on Manorway overbridge is much greater than the level at T04 (IR 5.49.49). The Secretary of State further notes the Inspector's view, following objections (IR 5.49.24, 5.49.37), that the proposed alternative is excessively long and circuitous, greatly inconveniencing users of T04 (IR 5.49.52). The Inspector was of the view that, as the current crossing is flat and can be easily negotiated by all pedestrians, the increased length and introduction of 78 steps on the proposed alternative would limit its use by current users of T04, rendering it inconvenient and unsuitable, particularly for users with protected characteristics (IR 5.49.57). The Secretary of State further notes the Inspector's conclusion that the alternative's excessive length and stepped access (compared to the ease of negotiating T04) would limit its use by users with protected characteristics, causing a likelihood of the PSED not being met if T04 was included in the Order (IR 5.49.57), and that this would not be addressed by the underpass under Manorway, which would be of no assistance to users of T04 travelling north-west on footpath 32 (IR 5.49.56).

328. The Secretary of State notes the Inspector's consideration of the necessity of the footpath to the south of Manorway, a matter raised by Mr Benton, who proposed a routing via the A13 roundabout (IR 5.49.29-34). The Inspector notes that, while users of the alternative could seemingly negotiate this roundabout without issue, the footpath to the south of Manorway would provide additional PROW opportunities, therefore according with NPPF paragraph 100 (previously paragraph 98) (IR 5.49.54). The Inspector further considers that the alternative's length and accessibility problems would not be addressed by routing users via the A13 roundabout (IR 5.49.51).

329. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, T04 should **not** be included in the Order as the proposed alternatives would not be suitable or convenient (IR 5.49.59).

### ***T05 Howells Farm***

330. The Secretary of State notes that T05 Howells Farm carries Thurrock public footpath 23 over the railway (IR 5.50.1). The Order would confer powers to close the crossing, extinguish an adjacent part of footpath 23 (IR 5.50.5), and create a new footpath along the south of the railway and new steps from this path to Southend Road overbridge. Users would be diverted via two routes: a western route over the new footpath, new steps and footway on Southend Road (IR 5.50.6), and an eastern route via the carriageway of

Inglefield Road and the footways on High Road and Southend Road, crossing the railway at Fobbing level crossing (IR 5.50.7).

331. The Secretary of State notes Mr Keeling's (OBJ-194) and Mr Kent's concerns that the proposed new footpath would encourage trespass and impact the development potential of the land over which it would run (IR 5.50.27, 5.50.32). The Secretary of State further notes the Inspector's view that the risk of trespass and damage to the site could be mitigated with path furniture or other infrastructure (IR 5.50.44) and that impacts on landowners and occupiers could be addressed through detailed design or compensation (IR 5.50.45).

332. The Secretary of State notes the Inspector's conclusion that T05's closure would have no adverse impact upon the nearby Vange and Fobbing Marshes SSSI (IR 5.50.48).

333. The Secretary of State further notes the Inspector's judgement that, in addressing the recommendation by the Road Safety Audit (NR-16) and the Ramblers (OBJ-148-R4) that a footway would need to be constructed along Southend Road, there are no onward links on the section without a footway (IR 5.50.56) so diverted users would have no reason to use such a footway (IR 5.50.57). The Secretary of State also notes the Inspector's view that users making onward journeys are unlikely to be inconvenienced by the proposed alternatives, as they would maintain T05's current uses (IR 5.50.61), the additional lengths involved would be small, and the proposed alternative would remove the need for users to walk in the carriageway or verge in Southend Road (IR 5.50.62, 5.50.63).

334. The Secretary of State notes the Ramblers' (OBJ-148) objection to the western alternative's lack of accessibility (IR 5.50.40), but notes the Inspector's conclusion that, as the stiles and approaches of T05 currently exclude users with mobility impairments, the steps on the western alternative would not be inconvenient to those capable of undertaking a journey between Fobbing Marshes and One Tree Hill Country Park using footpath 32 (IR 5.50.53). The Secretary of State further notes the Inspector's view that the footway on the Southend Road overbridge is sufficiently wide to carry pedestrians in comfort and safety and that the use of the footway can be considered to be safe (IR 5.50.54).

335. The Secretary of State notes the Inspector's consideration of safety concerns on the eastern alternative regarding the discontinuous footway on the western side of High Road (IR 5.50.58), highlighted by OBJ-148 (IR 5.50.35). The Secretary of State notes the Inspector's view that there was some merit in NR's submission that as High Road is used by 50 pedestrians per day without issue, the discontinuous footway issue does not need to be rectified (IR 5.50.59). The Inspector concluded that whilst there may be a risk involved, the existing infrastructure of dropped kerbs and tactile paving mitigates this risk (IR 5.50.60). The Secretary of State sought further clarity on the safety of this route and consulted NR on 22 September 2020. NR responded in its letter of 6 October 2020 that users were expected to cross to the eastern side of High Road, which has a footway for this stretch, and then return to the western side. NR noted that current users of T05 must use Southend Road, which has no footways. The Secretary of State is satisfied with NR's reasoning on this matter and that there are no additional safety concerns compared with the existing route.

336. The Inspector considered that whilst the inclusion of steps in the alternative route was not ideal, given the character and restrictions of the existing route, steps would not be unreasonable. The Secretary of States notes that the Inspector concluded that inclusion of T05 in the Order would not appear to lead to a likelihood that PSED would not be met (IR 5.50.64).

337. The Secretary of State agrees with the Inspector's conclusions that, taking account of these matters, T05 should be included in the Order as the proposed alternative would be suitable and convenient (IR 5.50.65).

### **General Representations**

338. The Secretary of State notes a number of general representations, including those objecting to the increased risk presented by many of the proposed alternative routes (IR 6.3, 6.8) and the length of the proposed alternatives (IR 6.4, 6.9). The Secretary of State considers that these issues have been adequately considered on a crossing-by-crossing basis.

339. Following receipt of the Inspector's Report, the Secretary of State received a further representation from Wivenhoe Town Council (OBJ-029). This representation contends that the Inspector for the Order considered only whether the proposed alternative route for each crossing was satisfactory, in contrast to the approach of the Inspector for the Network Rail (Suffolk Level Crossing Reduction) Order 2020. The Secretary of State does not agree with OBJ-029 on this matter. The Secretary of State considers that each application needs to be considered on its own merits and, as outlined in paragraph 16 above, it is the Secretary of State's view that the Inspector for the present Order has considered the necessity, suitability and convenience of the proposed alternative route as part of his conclusion for each crossing, and has additionally considered the strategic case for the Order as a whole.

340. The Secretary of State received a number of other representations after receiving the IR. These mostly concerned the time taken to reach a decision. The Secretary of State does not consider that these representations raised any substantive issues not already addressed in the IR or in this letter.

### **Mitigation and Protective Provisions**

341. The Secretary of State notes the Environment Agency's objection that the protective provisions in Schedule 13 to the Order should be for deemed refusal rather than deemed consent (IR 7.22), to allow for consistency between TWA orders and Development Consent Orders (IR 7.25). The Secretary of State agrees with the Inspector's conclusion that the principle of deemed consent is consistent with other TWA orders (IR 7.30) and the protective provisions in Schedule 13 do not require modification (IR 7.33).

### **Compulsory Purchase**

342. The Secretary of State notes that NR proposes to temporarily acquire land, with potential permanent acquisition having been resolved by negotiation (IR 8.6). NR also proposes to acquire permanent rights of access over land, though the rights acquired are

in effect temporary, to be exercised only in relation to the proposed works (IR 8.8). The Secretary of State further notes the Inspector’s conclusion that the public benefits of the scheme are sufficient to justify interference with the landowners’ human rights (IR 8.27), that interference with land is kept to that which is required to secure the purposes of the Order (IR 8.23), and that the Order provides provisions for compensation (IR 8.18-8.22).

343. The Secretary of State accepts the Inspector’s conclusion that, with the exception of the crossings to be excluded from the Order, there is a compelling case in the public interest to justify compulsory purchase (IR 8.29), that funding is likely to be available in a timely manner (IR 8.32), that the use of compulsory purchase is required to allow NR to complete the scheme in a timely manner (IR 8.33), and that there are no impediments to the scheme’s implementation (IR 8.34).

**Conditions to be attached to the Deemed Planning Permission**

344. The Secretary of State notes the Inspector’s conclusion that the proposed Conditions to be attached to the deemed planning permission would be necessary, relevant, precise, enforceable and reasonable (IR 9.7). Where not already stated in this letter, the Secretary of State agrees to the proposed amendments to the Conditions as set out in IR Appendix 10.

**Proposed Modifications to the Order**

345. Where not already stated in this letter, the Secretary of State agrees to the proposed modifications to the Order as set out in IR 14.4.

346. The Secretary of State is making a number of other minor textual amendments to the Order in the interests of clarity, consistency and precision. He considers that none of these changes materially alter the effect of the Order. These modifications are:

- Article 2 (interpretation): The definition of electronic transmission has been amended to reflect the position of the Secretary of State
- Article 17 (power to survey and investigate land): This provision has been amended with the insertion of new paragraphs (3) to (5) and paragraph (6)(d) and (e)

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

347. The Secretary of State agrees with the Inspector’s view that, for all the reasons given above, the case for making the Order has been made. He agrees with the Inspector’s view that, for some of the crossings under consideration, the balance has not been found to merit inclusion within the final made Order. The table below summarises the recommendation for each crossing that should be included in the Order.

Crossing number	Crossing name	Recommendation	
		Include	Do not include
E01	Old Lane	Include	
E02	Camps	Include	
E04	Parndon Mill	Include	
E05	Fullers End		Do not include
E06	Elsenham Emergency Hut	Include with modifications	

Crossing number	Crossing name	Recommendation	
		Include	Do not include
E07	Ugley Lane	Include	
E08	Henham	Include with modifications	
E09	Elephant	Include	
E10	Dixies		Do not include
E11	Windmills	Include	
E13	Littlebury Gate House		Do not include
E15	Margaretting	Include	
E16	Maldon Road	Include	
E17	Boreham		Do not include
E18	Noakes	Include	
E19	Potters		Do not include
E20	Snivellers	Include with modifications	
E21	Hill House 1	Include	
E22	Great Domsey	Include	
E23	Long Green	Include	
E25	Church 2	Include	
E26	Barbara Close	Include with modifications	
E28	Whipps Farmers	Include	
E29	Brown & Tawse		Do not include
E30	Ferry	Include	
E31	Brickyard Farm	Include	
E32	Woodgrange Close		Do not include
E33	Motorbike		Do not include
E35	Cranes No. 1	Include	
E36	Cranes No. 2	Include	
E37	Essex Way		Do not include
E38	Battlesbridge		Do not include
E41	Paget		Do not include
E43	High Elm		Do not include
E45	Great Bentley Station	Include	
E46	Lords No. 1	Include	
E47	Bluehouse	Include	
E48	Wheatsheaf	Include with modifications	
E49	Maria Street		Do not include
E51	Thornfield Wood		Do not include
E52	Golden Square		Do not include
E54	Bures		Do not include
E56	Abbotts	Include	
H01	Trinity Lane	Include	
H02	Cadmore Lane	Include	
H04	Tednambury	Include with modifications	
H05	Pattens		Do not include
H06	Gilston	Include	
H08	Johnsons	Include	
H09	Fowlers		Do not include



Crossing number	Crossing name	Recommendation	
		Include	Do not include
HA1	Butts Lane	Include	
HA2	Woodhall Crescent	Include	
HA3	Manor Farm	Include	
HA4	Eve's		Do not include
T01	No. 131	Include	
T04	Jefferies		Do not include
T05	Howells Farm	Include	

### **Notice under section 14 of the TWA**

348. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish notices of the determination in accordance with section 14(4) of the TWA.

### **Challenges to the Decision**

349. The circumstances in which the Secretary of State's decision may be challenged is set out in the note attached to Annex B to this letter.

### **Distribution**

350. Copies of this letter are being sent to those who appeared at the inquiry and to all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear.

Yours sincerely,

Natasha Kopala

***Interpretation***

In the following conditions: –

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

“the local planning authority” means Basildon District Council, Braintree District Council, Brentwood Borough Council, Broxbourne Borough Council, Castle Point Borough Council, Chelmsford City Council, Colchester Borough Council, East Hertfordshire District Council, Epping Forest District Council, Harlow District Council, London Borough of Havering, Rochford District Council, Southend-on-Sea Borough Council, Tendring District Council, Thurrock Council, Uttlesford District Council as respects development in their respective areas;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order” means the Network Rail (Essex and Others Level Crossing Reduction) Order 2022;

“Precautionary Method of Works” means The Anglia Level Crossing Reduction Strategy Precautionary Method of Works December 2017 prepared by Mott Macdonald; and

“the scheduled monument” means the crop mark site south of Ardleigh in the District of Tendring, list entry number 1002146.

***Time limit for commencement of development***

1. The development must commence before the expiration of five years from the date that the Order comes into force.

*Reason: To set a reasonable time limit for the commencement of the development and to avoid blight.*

***Detailed design approval***

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

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

***Ecology***

3. During the bird nesting season (1 March to 31 August), trees and any other suitable habitat affected by the works shall be searched for nesting birds and if any

nesting birds are found the nest shall be protected until the young have fledged and left the nest.

4. In relation to protected species, where relevant, the development shall be carried out in accordance with the Precautionary Method of Works.

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

### **Archaeology**

5. No development shall commence until a scheme identifying: (a) any location where a watching brief is required during construction, and (b) appropriate measures to be taken if any significant archaeological remains are found, is submitted in writing and approved by the local planning authority.

*Reason: To ensure that archaeological artefacts and information are preserved.*

### **Working hours**

6. Except where:

- (a) work is taking place on Network Rail's land, or
- (b) works in, to or affecting the highway are confirmed by the relevant highway authority to require it

construction of the development shall only be carried out between the hours of 8.00 am and 6.00pm.

*Reason: To preserve local amenity*

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

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

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

### **Scheduled Monument**

8. No physical works (including signposting) will be undertaken so as not to disturb the scheduled monument.

*Reason: To protect the scheduled monument site.*

Informative note: The highway authority should be consulted on any works affecting the highway.

## **ANNEX B**

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, because—

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

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within 3 working days of the date of this decision letter.

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