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Date: 4 February 2024

Network Rail Consultation Response

Reference: S62A/2023/0026
Location: Land South Of (West Of Robin Hood Road) Rush Lane Elsenham
Recommendation: No Objection

Dear Mark,

I write to provide you with Network Rail's (NR) updated consultation response regarding planning application S62A/2023/0026.

Following on from the Applicant's response letter (F185291) dated 24/01/2024, NR has carried out a further internal review of the application and I can confirm that NR no longer objects to planning application S62A/2023/0026.

NR still has aspirations to close Fullers End level crossing in the future and therefore we welcome that the proposed schemes' indicative design and layout does not prohibit the possibility of a future diversionary route for the public right of way.

Whilst NR does not object to the proposed development, I would like to take this opportunity to respond to a couple of points raised within the Applicant's letter (F185291) and clarify some details relating to the Network Rail (Essex and Others Level Crossing) Reduction Order.

It should be noted that NR believed, at the time of its responses to the original outline permission (UTT/19/0437/OP) and Appeal (APP/C1570/W/19/3242550), that the Secretary of State would be granting powers under the Network Rail (Essex and Others Level Crossing) Reduction Order to enable closure of Fullers End level crossing. NR was prepared, on that basis, for occupation of the proposed development site (at Land South Of (West Of Robin Hood Road) to be delayed or phased to minimise likely usage of Fullers End level crossing, until such time as the diversionary route was constructed and the crossing was closed. In the end, the Secretary of State declined to include the Fullers End level crossing in the Order, a contingency which was neither anticipated nor provided for.

It should further be noted that the legal test applied in the Transport and Works Act (TWA) Order procedure was the provision of a suitable and convenient alternative route for existing users. Because of concerns relating to slightly reduced accessibility for some

existing users due to the length of the route and lack of a bound surface, and the impact on the (then undeveloped) area of providing an illuminated route, the Planning Inspector recommended to the Secretary of State that they should not include the Fullers End proposal in the Order. I must add that it is *not* appropriate to characterise the previous history of decisions in this area as 'the crossing has been found to be safe by the Secretary of State'.

NR does consider that the additional traverses of the railway line and the presence of more residents close to the crossing will materially increase both quantitative and qualitative risk at the crossing, even if the crossing does not provide a utility route, but instead one only for recreational use.

We would finally observe that NR has never applied for a Rail Crossing Diversion or Extinguishment Order at Fullers End and that the legal tests for making an Order (expedience in the interests of safety of members of the public using or likely to use the crossing) and confirming the Order in the event of objections (expedient in all the circumstances) are materially different to those for making the TWA 2022 Order. Accordingly, NR is pleased to learn that the Applicant is willing to engage with NR if we decide to apply for a Rail Crossing Diversion Order. NR notes that the Applicant is already planning to provide for the existing public footpath on its land and trusts that this can be incorporated in the diversionary route if and when a Rail Crossing Diversion Order is confirmed.

Network Rail Asset Protection and Fencing

NR's previous response already highlighted the need for the Applicant to contact NR's Asset Protection and Optimisation (ASPRO) team prior to commencing any development adjacent to the operational railway.

We would also like to highlight that improvements to the railway boundary fencing alongside the development site, or provision of fencing within the proposed development to be maintained by the Applicant, would be appropriate given the change of use of the land to minimise the risk of trespass onto the railway. We appreciate this design detail is likely to be progressed as part of the Reserved Matters applications.

Thank you for giving NR the opportunity to comment on this application.

Yours sincerely

Elliot Stamp
Town Planning Manager (Anglia)