



The Planning Inspectorate

Report to the Secretary of State for Transport

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Date: 4 September 2023

TRANSPORT AND WORKS ACT 1992

TOWN AND COUNTRY PLANNING ACT 1990

**THE NETWORK RAIL (CHURCH FENTON LEVEL CROSSING REDUCTION)
ORDER 202[x]**

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

Inquiry sat 8 – 10 August 2023

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TABLE OF CONTENTS

Abbreviations and Terms	3
Case Details	4
Preamble	6
Description of the Order land and its Surroundings	9
The Case for the Applicant	9
The Cases for the Supporters	17
The Cases for the Objectors	19
Other Representations	20
Inspector's Conclusions	21
Recommendations	30
Appendix A – Appearances	31
Appendix B – Inquiry Documents	31
Appendix C – Core Documents	32
Appendix D – Contributors	34
Appendix E – Recommended Conditions to be Attached	35

ABBREVIATIONS and TERMS

CFM	Church Fenton to Micklefield railway line (the line crossed by the level crossings, footbridge and proposed highway bridge)
COCP	Code of Construction Practice
CTMP	Construction Traffic Management Plan
DFE	Design Flood Event (the 1% annual probability flooding event with a factor added in for climate change)
DfT	Department for Transport
DPP	Deemed Planning Permission
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
ER	Environmental Report
FRA	Flood Risk Assessment
HS2	High Speed 2
IRP	Integrated Rail Plan
LVIA	Landscape and Visual Impact Assessment
NOC	Normanton to Colton Junction railway line (the line which joins the CFM line between the location of the footbridge and Church Fenton station)
NPPF	National Planning Policy Framework
NR	Network Rail
NTPR	North Transpennine Rail Route
NYC	North Yorkshire Council (the successor unitary authority to a number of authorities in the area; of relevance here, North Yorkshire County Council and Selby District Council)
OLE	Overhead Line Equipment (the overhead wires and supporting infrastructure to power electric trains)
Order	The Network Rail (Church Fenton Level Crossing Reduction) Order
SoM	Statement of Matters
SoST	Secretary of State for Transport
ST	Sequential Test
TRU	Transpennine Route Upgrade
TWA	Transport and Works Act 1992
TCPA	Town and Country Planning Act 1990
2004 Rules	The Transport and Works (Inquiries Procedure) Rules 2004
2006 Rules	The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

CASE DETAILS**THE NETWORK RAIL (CHURCH FENTON LEVEL CROSSING REDUCTION)
ORDER 202[x]****REQUEST FOR A DIRECTION UNDER SECTION 90(2A) OF THE TOWN AND
COUNTRY PLANNING ACT 1990 FOR DEEMED PLANNING PERMISSION**

- The Order would be made under sections 1 and 5 of 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 1990 Act).
- The application for the Order and deemed planning permission was made on 20 July 2022.
- The application and supporting documents are available on the following website: <https://www.networkrail.co.uk/running-the-railway/railway-upgrade-plan/key-projects/transpennine-route-upgrade/church-fenton-level-crossing-reduction/>
- The Inquiry documents are available on the following website: <https://gateleyhamer-pi.com/en-gb/church-fenton/>
- The Order would authorise the closure of three level-crossings (the Rose Lane crossing, Poulters level-crossing and Adamsons level-crossing) and provide new pedestrian and vehicular access routes for private rights holders across the railway. This will be achieved by replacing the three level-crossings with a new road bridge and access road which will join Common Lane to the southern end of Rose Lane. Access tracks to farmland, replicating the access provided by Poulters and Adamsons level-crossings will be taken from this access road. The existing footbridge over the railway line located on Rose Lane will be removed and a new footbridge will be provided in the same location. A parking area for the residents of Rose Lane would be provided at the end of the new highway.
- The Order includes provisions for the compulsory acquisition of land for the proposed works and ancillary purposes, including worksites; the acquisition of rights over specified land; provisions for the temporary use of land in connection with the proposed scheme; and the extinction and creation of private rights; and the temporary stopping up of highways; closure of level-crossings; provisions relating to streets; and powers to survey and investigate land.
- There were 2 objections to the Order outstanding at the close of the Inquiry.

SUMMARY OF RECOMMENDATIONS

**THE NETWORK RAIL (CHURCH FENTON LEVEL CROSSING REDUCTION)
ORDER 202[x]**

That the Order, subject to the corrections in the version handed up during the inquiry (INQ11.2) be made.

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

That deemed planning permission be granted subject to conditions, for the works that are the subject of the Order.

PREAMBLE

Application and contributors

- 1 The Applicant, Network Rail Infrastructure Limited (NR), owns and operates the rail infrastructure of Great Britain. Its purpose is to deliver a safe, reliable and efficient railway. NR is primarily responsible for maintenance, repair and renewal of track, stations, signalling and electrical control equipment.
- 2 NR seeks powers by way of the Network Rail (Church Fenton Level Crossing Reduction) Order 202[x] (the Order), under sections 1 and 5 of the Transport and Works Act 1992 (the TWA) to stop up three private level-crossings, provide a new highway and bridge, new footbridge and carry out associated works, including the provision of a parking area for Rose Lane residents. NR also seeks to acquire land, both on a permanent and temporary basis, to carry out these works and others for which NR already has permitted development rights.
- 3 The other works to be carried out under permitted development rights, but requiring Order land, include track realignment, the extension of the third track section, electrification works and fencing. Utility diversions will also be required.
- 4 NR has also requested, under section 90 (2A) of the Town and Country Planning Act 1990 (the TCPA) that planning permission be deemed to be granted for those works authorised by the Order.
- 5 On 11 January 2022, under Rule 7 of The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (the 2006 Rules), NR requested a screening decision from the Department for Transport (DfT) as to whether an environmental impact assessment (EIA) was required for the Order application. Following consideration of that request and the consultation responses of various relevant bodies, and having regard to the characteristics and location of the project and the type and characteristics of potential impact, on the basis of the available information, the Secretary of State's screening decision was that an EIA was not required¹ for the Order scheme.
- 6 Despite that, NR prepared and submitted an Environmental Report (ER)² in response to feedback on the need to consider in detail issues of water resources, landscape and visual effects and ecology. The ER also considered arboriculture, agriculture and soils, cultural heritage and archaeology, traffic and transport, and noise and vibration. The ER was used to enable NR to incorporate impact avoidance and mitigation measures into the scheme design.

¹ NR10

² NR16

7 Three objections to the proposed Order were received, although one of these was later reclassified as a representation. Eleven representations were received, of which six were withdrawn. As a result, two objections remained by the close of the inquiry³, although one of these has been substantively addressed through a letter of comfort from NR⁴. There are also six letters of support. I have reported on these remaining objections, representations and letters of support.

Statement of Matters

8 On 12 May 2023 the DfT issued a Statement of Matters (SoM) pursuant to Rule 7(6) of the Transport and Works (Inquiries Procedure) Rules 2004 (the 2004 Rules). This set out the matters about which the Secretary of State for Transport (SoST) particularly wished to be informed in their consideration of the application.

9 That SoM did not preclude me from hearing evidence on any other matter I consider relevant, and its order and numbering did not imply any relative importance.

10 The matters specified are:

1. *The aims and objectives of, and the need for, the proposed Church Fenton Level Crossing Reduction ("the scheme"), including its effects on railway operations.*
2. *Whether all statutory procedural requirements have been complied with.*
3. *The main alternative options considered by NR and the reasons for choosing the preferred option set out in the Order.*
4. *The likely impact of the exercise of the powers in the proposed TWA Order scheme on local businesses, residents and crossing users. Consideration under this heading should include:*
 - a. *Impact on landscape including hedges and trees.*
 - b. *Impact on drainage and flooding.*
 - c. *The impact of construction works on pedestrian and vehicle access.*
5. *Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the*
*Guidance on the "Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" published on 29 October 2015 (as amended on 28 February 2018)*⁵:

³ OBJ01 (Mr Boddy) and OBJ02 (Mr Poulter).

⁴ INQ13

⁵ This guidance is now the Department for Levelling Up, Housing & Communities Guidance on Compulsory purchase process and The Crichel Down Rules, updated on 16 July 2019

- a. *Whether there is a compelling case in the public interest to justify conferring on NR powers to compulsorily acquire and use land for the purposes of the scheme.*
 - b. *Whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having regard to Human Rights Act).*
 - c. *Whether there are likely to be any impediments to NR exercising the powers contained within the Order, including the availability of funding.*
 - d. *Whether all the land and rights over land which NR has applied for is necessary to implement the scheme.*
6. *The conditions proposed to be attached to the deemed planning permission for the scheme.*
 7. *Any other matters which may be raised at the inquiry which may be important and relevant to the Secretary of State's decision.*

The inquiry

- 11 The public inquiry was called by the SoST under section 11 of the TWA, and I was appointed to hold an inquiry into the application for the Order and Deemed Planning Permission (DPP).
- 12 A pre-inquiry note was set to the parties on 4 July 2023, setting out certain procedural matters relating to the inquiry.
- 13 I opened the inquiry at 10:00 on Tuesday 8 August 2023 and closed it on Thursday 10 August. I carried out an unaccompanied site inspection in advance of the inquiry on 2 August 2023, and a formal, accompanied site visit during it at the request of a statutory objector. My thanks to Mr Poulter and NR for facilitating this.
- 14 Mrs Joanna Vincent of Gateley Hamer was appointed as independent Programme Officer for the inquiry. Her role was to assist the procedural and administrative aspects of the inquiry, including the programme, under my direction. She was of considerable help in ensuring the proceedings ran efficiently and effectively but played no part in this report.

This report

- 15 This report sets out a brief description of the land covered by the proposed Order, its surroundings and the main elements of the cases for the applicant, supporters, objectors and those making representations. At the end of the report are my conclusions framed around the SoM and my recommendations. A list of abbreviations is set out at the start and lists of documents and appearances are appended. Footnotes in the report provide references to documents as well as points of information and clarification.

DESCRIPTION OF THE ORDER LAND AND ITS SURROUNDINGS

- 16 The Order land, described in detail in the ER⁶ is located in Church Fenton, within the former Selby District Council area, now part of the new North Yorkshire Council (NYC). The area is generally flat and open, with groups of trees, hedging and woodland throughout the land and the surrounding area. It contains three private level-crossings, the access tracks to them, a footbridge, Rose Lane, Common Lane and farmland. There are no public rights of way within the Order land.
- 17 These three private level-crossings cross the Church Fenton to Micklefield railway line (CFM) railway line, which is part of the North Transpennine Rail Route (NTPR), running between York and Manchester, via Leeds and Huddersfield. To the north-east of the Order area, the CFM line joins the Normanton to Colton Junction (NOC) line, then Church Fenton railway station lies beyond that.
- 18 None of the land is subject to environmental designation. There are a number of watercourses within the Order land, and it lies within Flood Zones 2 and 3. There are no World Heritage Sites, scheduled monuments, listed buildings, conservation areas, registered parks and gardens, battlefields or protected wreck sites within the Order land or within 500m of it. The Order land is classified as 'Best and Most Versatile' agricultural land and lies within the South and West Yorkshire Green Belt, which extends eastwards to the NOC line.
- 19 Around the Order land lie houses, farms and some light-industrial units, with their associated buildings, generally in groups, largely fronting onto and accessed from Common Lane. Fifteen private cottages accessed from Rose Lane lie between the CFM and NOC line, at the eastern extent of the Order land. The village of Church Fenton lies roughly to the north-east, Barkston Ash to the south-west.

THE CASE FOR THE APPLICANT

- 20 The Order scheme would enable NR to deliver improvements and upgrades to this part of the NTPR as part of the wider Transpennine Route Upgrade (TRU) programme. The Order scheme would allow for an increase in line speed (through track realignment and the extension of the third track) and electrification, all improving capacity, journey times and reliability. The Order would also remove risks to users of the level-crossings and the railway associated with the current at-grade crossings.
- 21 The Order scheme is an integral part of the TRU programme, the full benefits of which cannot be delivered without it. The TRU is itself part of a much wider governmental commitment to improving public transport, particularly in the north. The TRU has a role to play in delivering the levelling-up agenda, building back the northern economy and is supported through the Integrated Rail Plan, aiming to enhance capacity and connectivity to meet long-term demand, making journeys faster, easier and more reliable. There

⁶ NR16

is national, regional and local policy support for the TRU, and it has been fully funded.

- 22 Only two landowners have objected to the Order scheme, and even these express support in principle for it, objecting only on detailed matters.
- 23 The applicant's specific case in relation to the issues raised in the SoM is set out below and in their closing submission to the inquiry⁷.

Matter 1. The aims and objectives of, and need for the scheme

- 24 The NTPR is a strategic rail route, in need of, but lacking in infrastructure investment to increase capacity, speed and reliability.
- 25 The Order scheme is a key part of the TRU, which aims to deliver improved journey times between key northern cities, improved capacity for local and express services, improved reliability, retain existing freight paths and contribute to NR's decarbonisation strategy and climate policy.
- 26 Whilst the Order scheme is a small part of the overall TRU, the current form of this section is a constraint to the wider project. The two-line layout affects service performance, resilience and capacity. The three level-crossings restrict the ability to increase the number of lines at this location, as safety standards do not normally allow for more than two-lines over a level-crossing. In addition, speed is limited by the track curvature and the presence of the level-crossings. Added to that, level-crossings are the largest single contributor to train accidents and risk on the network. The Rose Lane crossing in particular has a significant history of trespass and misuse, which has led NR to employ a full-time crossing attendant since 2020.
- 27 The replacement (wider and taller) footbridge is required to allow for the additional line, reduction in track curvature and electrification of the NTPR. Electrification requires increased clearance between structures over the railway and the overhead line equipment (OLE). In addition, electrification of lines over level-crossings has additional risks around contact with the OLE equipment, particularly at crossings used by farm machinery, such as at the Poulters and Adamsons crossings.
- 28 The closure of the level-crossings is necessary to increase line speeds, and realise all of the attendant benefits, including the safety improvements and risk reduction for current users of the crossings. Increasing line speed, capacity and electrifying the line in this location whilst retaining the level-crossings would increase risks to all in a way which NR considers cannot be appropriately mitigated. These issues are all addressed by the replacement of those crossings with a new highway bridge and the works associated with it.
- 29 The replacement footbridge is required to accommodate the realigned tracks, extended third track, and electrification of the line.

⁷ INQ15

- 30 The Order scheme will contribute to delivery of the TRU's aims by allowing the closure of the three level-crossings. This in turn allows an increase in lines speed, capacity, safety improvements and all of that improves performance on the NTPR. The replacement footbridge allows for track works and electrification, again, increasing speeds, safety and delivering environmental benefits. The acquisition of land, both temporarily and permanently is necessary to enable all of these works.

Matter 2. Compliance

- 31 At the inquiry, NR confirmed that it had complied with its statutory obligations under the 2006 and 2004 Rules, and submitted a statement to that effect with supporting documents.⁸

Matter 3. Main alternatives, reasons for choosing preferred option

- 32 There are no high-level strategic alternatives to the Order scheme which would deliver the TRU remit of improving performance and capacity whilst reducing journey times.
- 33 NR initially considered if the TRU aims could be delivered whilst keeping the level-crossings open, and mitigating risks, but this was not considered feasible.
- 34 A range of concept options were explored, including the replacement of the crossings with a new bridge (Option A), the provision of new crossings on the NOC line to allow closure of the crossings on the CFM line (Option B), the purchase of the Rose Lane cottages to remove the need for that crossing and the provision of alternative access for the Poulters and Adamson crossings (Option C) and the closure of the crossings with no replacement (Option D).
- 35 Sub-options within Option A were then considered, and two of those, which were broadly similar to the Order scheme were taken to public consultation. Following further consultation and engagement, with stakeholders, affected landowners and the public, the final option, the Order scheme, was selected.
- 36 Flood risk was a key factor driving the option selection, as much of the area, and indeed, much of the Order land is within Flood Zones 2 and 3. The sequential test (ST) required the comparison of reasonably available alternative options and locations, and the results of this were agreed with the local planning authority. High Speed 2 (HS2) Safeguarding was another key consideration in the option selection. Whilst the Order scheme does have a small section falling within the HS2 safeguarded area, this area and the process of safeguarding is a protection and management measure, not an absolute prohibition, and NR have used as little of the safeguarded area as possible and consulted with HS2 throughout the process.
- 37 Engagement with affected landowners has also influenced the option selection and has resulted in a number of changes to the Order scheme. These changes include the provision of east-west access across the new

⁸ INQ3

highway, a new cattle creep and commitments around land usage and restoration.

- 38 The Order scheme meets the operational and functional needs of the railway, allowing the introduction of OLE, line speed and capacity increases and a contribution towards the TRU. It does this whilst also allowing safe access and connectivity to be provided, minimising land-take, minimising the amount of raised development in Flood Zone 3, avoiding increased flood risk for others elsewhere. NR accepts that the impacts of the Order scheme would be greater for some than others but considers that the Order scheme is the best available option, having regard to what it is seeking to address, constraints and consultation.

Matter 4. Likely impact on local businesses, residents and crossing users

- 39 As noted above, an EIA was not required for the Order scheme, but NR submitted an ER which summarised its assessment of the environmental effects of the Order scheme as well as mitigation measures proposed.

Landscape, including hedging and trees

- 40 A detailed landscape and visual impact assessment (LVIA⁹) was carried out for the Order scheme. Using viewpoints selected and agreed with the local planning authority, NR produced a series of photomontages within the ER, showing the Order scheme with no mitigation and at year 15 with mitigation (essentially planting and landscaping).
- 41 In considering effects on landscape, the LVIA concluded that given the scale of the landscape national character area relative to the scale of the Order scheme, it is unlikely to be significantly affected. There would be a low magnitude of impact during construction and year 1, with no discernible change at year 15, when compared to the baseline landscape type and area.
- 42 In considering visual impacts on receptors at Common Lane and Rose Lane, the LVIA concluded that there would be a medium magnitude of impact during construction and year 1, but that this would reduce to low/very low by year 15 as a result of the maturing hedgerow and tree planting. In this, NR have explicitly considered the views from OBJ02's property¹⁰. Whilst the views from there would differ slightly from those in the photomontages, it is the professional opinion of NR's expert that such a slight difference would not result in a different assessment of the magnitude of any visual impact.
- 43 The Order scheme would result in the loss of eight individual trees, one group of trees and sections from three hedges. Three of these trees are removed in connection with the access road, track and culvert works. One hedge section is removed in connection with the new Rose Lane/Common Lane junction arrangements. The remainder are removed in connection with the replacement footbridge and residents parking area at Rose Lane.

⁹ NR16, NR37, NR37A

¹⁰ NR37, NR37A

- 44 All remaining trees are to be retained and protected, and in any case, their loss is to be mitigated through replacement planting.

Drainage and flooding

- 45 Flood risk assessment (FRA) has informed the selection and design development of the preferred option now included in the Order. This has been set out in detail in the ER¹¹, and includes an FRA, ST and Drainage Strategy.
- 46 The key flood risk is from the River Wharfe to the north; the Order scheme lies in both Flood Zones 2 and 3. This has been a key factor in both the location of the new highway and bridge, as well as its detailed design.
- 47 The detailed flood mapping of the area, overlain with the Order scheme¹² shows that although elements of the at-grade (that is, essentially flat, ground-level) parts of the highway and bridge are within Flood Zone 3, the design ensures that the greater part of the embankment (the volume of which would have the greatest effect on flood water storage within Flood Zone 3) is in Flood Zone 2.
- 48 Any movement of the Order scheme to the west, as proposed by OBJ02, whilst reducing the amount of at-grade development in Flood Zone 3, would increase the amount of the embankment within it, and would cause the potential storage basins to lie in Flood Zone 3.
- 49 Such an approach would neither be sequentially preferable in terms of the ST, as the location in the Order scheme would be a reasonably available alternative at lower risk of flooding, nor acceptable to the Environment Agency.
- 50 The Order scheme area is largely flat, with some more raised or depressed areas, with the CFM currently acting as a flood barrier preventing flood water flowing beyond it. Modelling of a 1 in 100-year flood event with climate change effects added in (the Design Flood Event, (DFE)) does however show flood water overtopping the CFM line in two places. Modelling of the original design for the highway and bridge, with embankments on either side of the line, then resulted in increased flood depth at the Rose Lane cottages in the DFE.
- 51 As this was considered unacceptable, the design was altered to the current open-span arrangement south of the CFM (the 'elevated flood alleviation structure'), which allows flood water flows during the DFE to continue southwards, protecting the Rose Lane cottages from any Order scheme associated effects.
- 52 This change also means that the loss of flood water storage arising from the embankment to the north of the CFM is mitigated, such that the initially proposed storage areas adjacent to it are no longer required. The modelling

¹¹ NR16, NR36, NR36A

¹² NR16, Appendix 5B

which drove these conclusions is accepted by the Environment Agency and the Lead Local Flood Authority.

- 53 The Order application is accompanied by a Drainage Strategy¹³ which shows the detailed works proposed to existing culverts and the overall approach to be taken to drainage. The Order scheme will replicate existing land drainage routes, take into account existing topography and through the use of swales and detention basins, ensure that surface water run-off will return to the same system of watercourses as at present. The Drainage Strategy also ensures that run-off rates will be no greater than at present.
- 54 Issues around damage to existing drainage features, structures or methods have been dealt with in protective provisions within the draft Order, as well as with specific letters of comfort, such as provided to OBJ01¹⁴.
- 55 As such, there would be no adverse effects on local residents or businesses as a result of the Order scheme.

Construction works, pedestrian and vehicle access

- 56 The draft Order does not allow for the closure of the existing level-crossings until the new access road, and the new access track are open for use. The replacement footbridge will not be constructed until the new access road has been provided in alternative. Pedestrian and vehicular access to Rose Lane cottages and the farmland to the south of the CFM will be maintained throughout the construction period. During construction of the footbridge, pedestrian access to Rose Lane cottages will be via the new access bridge.
- 57 Overall the Order scheme will improve access for those with rights to use the level-crossings. Grade separated access will remove risks associated with the use of level-crossings and will remove the need to wait for suitable crossing intervals; something which would worsen with the proposed increase in speed and frequency of train services.
- 58 Three construction compounds within the Order land would be required. Access would generally be taken from Common Lane, with traffic coming from the east or west, depending on the size of vehicle and its origin. The construction compounds would generally be accessed from new junctions and haul roads in the same location as the access road and tracks within the Order scheme itself. The compound at Rose Lane, one of the smaller compounds, associated with the replacement footbridge works and the track works would be accessed from a new junction, and this would be restored to current conditions on the completion of construction works.
- 59 Construction traffic access, and the effects of construction traffic on other users are to be managed through a Construction Traffic Management Plan (CTMP), to be secured through a proposed planning condition. It may be necessary to implement single-lane closures on Common Lane.

¹³ NR16, Appendix 5D

¹⁴ NR36 Appendix D

- 60 NR intend to deliver bulk materials and heavy plant to the site and point of use by rail wherever possible but will also use the level-crossings as required. NR do not anticipate any conflict with farm-machinery movements, but can coordinate the use of the level-crossings as required.
- 61 Through the use of both the Code of Construction Practice (COCP) and the CTMP, the potential effects arising from constriction on traffic, transport, pedestrian and vehicle access will be managed and mitigated, such that suitable access will be maintained for residents, local businesses and crossing users during the construction of the Order scheme.

Matter 5. Compulsory purchase, the public interest and human rights

- 62 The Order seeks authorisation to carry out works to deliver, and then operate, the Order scheme. The Order lands are required for that purpose, and to deliver track, line-speed and capacity improvements.
- 63 NR has set out the need for each plot of land covered by the Order, whether for compulsory purchase, temporary possession or acquisition of rights¹⁵. Detailed technical evidence on design, drainage, flooding and landscaping justifies the need for the land, both for delivery of the Order scheme and for the mitigation of environmental effects.
- 64 The draft Order includes sufficient land and rights to deliver the Order scheme, and where possible, provides clarity on land which is only required temporarily. In general NR will seek to minimise the amount of land to be permanently acquired. As detailed design develops it expects to be able to reduce the amount of land required for compulsory acquisition. It will not take more land than is required for delivery of the Order scheme, and will restrict itself to temporary possession or the acquisition of rights where this is sufficient to deliver the Order scheme. This approach to minimising land use will apply to temporary possession as well as to compulsory acquisition. The Order provides for compensation where land or rights are acquired and in relation to loss or damage suffered as a result of temporary use.
- 65 There is a compelling need for the Order scheme, and therefore a compelling case in the public interest for the acquisition of land, rights and powers of temporary possession required to deliver it.
- 66 The Order scheme enjoys the express support of government, and funding for it is committed. There are no remaining impediments to the delivery of the Order scheme beyond the making of the Order and the TCPA section 90 direction.
- 67 The purposes for which the Order is sought are sufficient to justify interference with rights protected by Article 1 of the First Protocol to the European Convention on Human Rights (ECHR).

¹⁵ NR33

Matter 6. Conditions proposed to be attached to the DPP

68 Planning conditions proposed to be attached to the DPP have been written in collaboration with Selby District Council, now NYC. These have now been agreed with them, and an updated list, with typographical corrections, including to document references was provided to the inquiry¹⁶. NR has submitted evidence as to the need for the conditions, including reasons, and set out how they meet the tests in the National Planning Policy Framework (NPPF).

Matter 7. Any other matters

Response to OBJ01 – Mr Boddy

69 NR has provided a response to the matters raised by Mr Boddy in its evidence and the proofs of its witnesses, and most recently in a letter¹⁷ in response to his latest concerns¹⁸.

70 NR have committed to inspect the drainage of Mr Boddy's land before and after completion of the works. NR will carry out any necessary remedial works, and can do so for up to five years after the opening of the bridge, giving ample time to identify the need for any remedial works.

Response to OBJ02 – Mr Ronald Poulter

71 NR has provided a response to the matters raised by Mr Poulter in its evidence and the proofs of its witnesses.

72 Mr Poulter's request to move the new access road further to the west, away from Willow Farm New House, was not considered as a potential option during NR's option analysis process. However, it has been considered by NR subsequently. As explained in the evidence¹⁹ such a move would place more of the raised elements of the Order scheme into Flood Zone 3, with attendant implications for flood-storage volume and water flows. It would also run contrary to the sequential approach for site selection and layout. Such a move would also bring the scheme further into the HS2 safeguarded area. This would conflict with the approach taken so far, to which HS2 have not objected, whereby NR have tried to minimise as far as possible the encroachment of the Order scheme into the safeguarded area. NR note the July 2023 commitment of the government to retain the safeguarding approach²⁰ until such time as alternative choices or approaches are confirmed.

73 In addition, there is no plan showing the proposed modification, no supporting assessment or design work, and there has been no public consultation. There is no formal modification available to be recommended

¹⁶ INQ09

¹⁷ INQ13.2

¹⁸ INQ13.1

¹⁹ NR36, NR34, NR32, NR31

²⁰ INQ06

and the public interest and benefits of the Order scheme would be delayed were the Order not recommended to be made.

- 74 There has been extensive consultation with affected landowners and the wider public²¹, and none of the signatories to the letter of support appended to OBJ02's Proof of Evidence complain of a lack of liaison or communication. There has been no breach of the EIA Directive, as no EIA was required.
- 75 There has been no breach of Mr Poulter's human rights. To the extent that this part of the objection relates to the views from Willow Farm New House, there has been no failure, and the evidence makes it clear that those effects have been considered²². To the extent that this part of the objection relates to concerns over noise and vibration from the use of the new access road, this has been dealt with in evidence²³, and in any case, given the relationship of the property to Common Lane and the likely level of use, it is not expected to result in any noticeable increase over the existing situation. The Order scheme would also result in the removal of, and cessation of, the current audible warning sounds associated with the level-crossings on the CFM line. As noted, construction effects would be controlled through the CTMP and COCP, required by planning condition.
- 76 There is no deficiency in the protected species information provided by NR, and its approach to changes in circumstances, particularly in relation to mobile species such as badgers, has been dealt with in the survey methodology²⁴ and can be appropriately managed and dealt with as works progress.
- 77 Following evidence at the inquiry, NR has sought to address concerns over the relationship of the construction compound to the use of land for grazing and access to barns within the Willow Farm New House complex. A letter of comfort²⁵ has been sent to Mr Poulter in that regard.

Conclusion

- 78 NR respectfully request that the Order should be made so that much needed improvements to the NTPR can be delivered as scheduled.

THE CASE FOR THE SUPPORTERS

SUP01 – Freightliner Group Ltd

- 79 As a rail operator, Freightliner is aware of the importance of investment, and considers the infrastructure subject to the Order to be a constraint on the growth of the network around it. The Order scheme is integral to the delivery of the TRU, and Freightliner is fully committed to the successful, efficient and timely delivery of the TRU. The Order scheme is a critical part of levelling up and failure to carry it out would be a constraint to the rail service and

²¹ NR07

²² NR37

²³ NR35, NR16

²⁴ NR16, NR10, INQ10

²⁵ INQ12

operation. The works are needed and critical to the delivery and success of the TRU.

SUP02 – Northern Trains Ltd

80 Northern Trains Ltd is supportive of the TRU programme, and the Order scheme is integral to the successful delivery of it. Failure to carry out the Order scheme would be a constraint to the rail service and operation. The works are needed and critical to the delivery and success of the TRU.

SUP03 – Transpennine Express

81 As a rail operator, Transpennine Express is aware of the importance of investment, and considers the infrastructure subject to the Order to be a constraint on the growth of the network around it. The Order scheme is integral to the delivery of the TRU, and Transpennine Express is fully committed to the successful, efficient and timely delivery of the TRU. The Order scheme is a critical part of levelling up and failure to carry it out would be a constraint to the rail service and operation. The works are needed and critical to the delivery and success of the TRU.

SUP04 – P & J Squires

82 Support the Order scheme following years of uncertainty since the level-crossing became manned and closure was proposed.

SUP05 – Selby District Council

83 Welcomes the application and fully recognises and supports the stated principles and outcomes. The Order scheme will facilitate safer crossing of the railway for all users, allow electrification, increased speeds, efficiency, reliability all as part of the TRU programme.

84 They make comments on noise, landscape, ecology, planning conditions, noting no objection on these grounds from internal consultees subject to the imposition of relevant planning conditions.

85 The Council is committed to assisting NR wherever possible in bringing forward investment. They understand disruption is inevitable, but are confident all issues can be resolved.

SUP06 – J Rushby (previously REP02)

86 Mr Rushby is pleased that a replacement footbridge has been included. The existing footbridge is well used for accessing the village and its facilities and if it were not replaced, walking times to the village would become unattractive.

THE CASE FOR THE OBJECTORS

OBJ01 – Mr Jon Boddy

87 Mr Boddy owns three parcels of land²⁶ affected by the Order. He is concerned that the drainage of and on his land would be damaged beyond repair by the Order works, and has concerns over the quality of any remediation or repair put in place by NR. He is also concerned about surface-water run-off rates and the condition of culverts and drains in the wider area, which would be affected by the Order works. He has also expressed concerns over tree and hedgerow loss, and the potential need for archaeological surveys.

88 He is concerned over the configuration of the new track layout and the potential for his land to be required for this.

OBJ02 – Mr Ronald Poulter

89 Mr Poulter is the owner of the Willow Farm complex and resident at Willow Farm New House²⁷. His land is required for the construction of the new highway, bridge, access track and construction compound.

90 Initially his objection included reference to the temporary use of plot 014 for access, although this matter has now been resolved through a commitment by NR not to use part of plot 014²⁸. The substantive part of his remaining objection, presented at the inquiry relates to the location of the new highway and junction with Common Lane and its relation to his home, Willow Farm New House. He fears the disruption and noise from a new road so close to his property, which is unnecessary given there is other land to the west, in the same ownership which could take the road away from occupied properties. He suggests that the access road and bridge be relocated some 50m to the west, adjacent to the boundary of his land to Norwood, a currently vacant dwelling owned by HS2. He notes that were this house to be reoccupied in the future, it would be on the basis of the new access road already adjacent to it.

91 Mr Poulter does not object to the principle of the Order scheme, but to the proposed position of, and proximity to his residence of, the new access road. He considers that NR have not fully examined the possibilities of relocating the access road to the west as he suggests.

92 He considers that the submission of NR fails to comply with the 2006 Rules in that a true and accurate Environmental Statement has not been submitted.

93 He does not consider that the response of NR to his suggested alternative (that there are flooding issues and HS2 safeguarding issues associated with his preferred location) is sufficient, that the flood mitigation work can be carried out again, and that referring to HS2 safeguarding, for a scheme he describes as scrapped is simply a failure to engage with HS2.

²⁶ References 012, 015 and 016; see NR08, NR09

²⁷ NR08, NR09

²⁸ 2 November 2022 letter, NR Reference 151666-TRA-E4-000-LTR-W-LP-000402

- 94 Mr Poulter notes that in any event, the Order scheme also infringes on the HS2 safeguarded area, and that his alternative proposal would place more of the overall proposal into Flood Zone 2 rather than Flood Zone 3.
- 95 The location of the access road so close to Willow Farm New House will impact on peace and quiet, and the visual impact of the road, embankment and bridge would severely impact views. The visualisations in the documents underplay the likely visual effects. All of this would be improved using his suggested alternative, which would further separate the road and bridge from Willow Farm New House, and would screen it behind existing vegetation at Norwood.
- 96 He considers that these effects would severely impact on rights protected under Articles 1 and 8 of the ECHR.
- 97 Mr Poulter also raises highway safety concerns over the location of the new junction with Common Lane and its proximity to residential and business accesses.
- 98 He has provided letters of support for his objection from Church Fenton Parish Council and from six local residents or business owners. These letters also refer to the relationship of the new junction to existing accesses, highway safety, landscape and visual effects and issues around the future farming of the land.
- 99 One of these letters is from a Mr Adamson, who currently has use of the Adamsons Level Crossing (the westernmost of the three level-crossings to be closed). He notes that the increased walking distance to access his farmland via the new bridge rather than via his level-crossing would be reduced by 100m were Mr Poulter's alternative location used. Mr Adamson is not a formal Objector to the Order.
- 100 During the inquiry, Mr Poulter also raised concerns over the effectiveness of protected species investigation and mitigation works and methods.

OTHER REPRESENTATIONS

REP01 - H West and S Bowring

101 Now withdrawn.

REP02 – J Rushby (now SUP06)

102 See above.

REP03 – M and D Wheldrick

103 They agree in principle with the Order scheme, but do not want a bridge due to the ecological impact and are concerned at Rose Lane becoming part of a circular route. They do not want the current bridge removed until the new road is opened.

REP04 – I and S Hussey

104 They have no objection in principle, but are concerned over the effect of the Order scheme on private rights.

REP05 – Northern Powergrid

105 Now withdrawn.

REP06 – Environment Agency

106 Now withdrawn.

REP07 – Royal Mail Group

107 Now withdrawn.

REP08 – North Yorkshire County Council

108 Now withdrawn following the completion of a Side Agreement.

REP09 – B Jones

109 Now withdrawn.

REP10 – S Peacock

110 Mr Peacock had no objection to the Order scheme but was concerned about the delivery of materials to site and the effect of any temporary road closures on roads in the area.

REP11 – Mr and Mrs Ratcliffe

111 Mr and Mrs Ratcliff made comments around street lighting and safety, flooding, tree removal, protection and replacement, and the accessibility of the new footbridge.

INSPECTOR'S CONCLUSIONS

112 I have considered the matters arising from the proposed TWA Order. I have based these conclusions around those matters on which the SoST particularly wishes to be informed, set out in the SoM and I have then set out my conclusions on the remaining objections and reached overall conclusions. Within this reasoning, I have also included consideration of the issues around the DPP as they are much the same. My conclusions on the issues raised in the SoM are set out below.

Matter 1. The aims and objectives of, and need for the scheme

113 There are no objections to the Order which question its aims, objectives or the need for it.

114 The aims, objectives and need for the Order scheme are clearly set out by NR. The Order scheme has a key part to play in the TRU, and that in turn has a key part to play in the NTPR. Delivering the TRU will enable the NTPR to meet the needs of passengers and train operators, improving capacity

and resilience, enabling the levelling-up agenda and contributing towards the northern powerhouse. The Order scheme will contribute towards this whilst protecting the access rights of those most affected by it and will improve the safety and convenience of their means of access across the CFM line. The Order scheme will improve the safety, reliability and resilience of one of the busiest stretches of railway line in the north of England, delivering substantial public benefits across the region.

Matter 2. Compliance

- 115 Although OBJ02 has objected to the proposal on the basis of NR's perceived failure to submit an Environmental Statement, such a statement was not required for the Order application²⁹. An ER³⁰ was nevertheless submitted.
- 116 NR have submitted a suite of documents around legal compliance³¹. Having reviewed it, the requirements in the Rules and the representations and objections, I am satisfied that all statutory procedural requirements have been complied with.

Matter 3. Main alternatives, reasons for choosing preferred option

- 117 NR have set out in detail the alternative options they considered during the process which led to the submission of the Order application. I am satisfied that given the location of the Order scheme and the particular nature of its aims, there are no strategic alternatives to it. It would be unfeasible, impractical and unsafe to allow the level-crossings to remain open in light of the wider improvement works needed for the TRU.
- 118 Turning to the alternative scheme options considered by NR, it is clear from their consultation report³² and the supporting technical work, that a range of options were considered, consulted upon and reviewed to consider their effects on local businesses, residents and crossing users, and to robustly assess them against other technical constraints, including safety and railway operational matters, engineering and design, as well as flood risk.
- 119 NR have not assessed the alternative proposal suggested by OBJ02 in as much detail as the Order scheme. However, I am satisfied that they have considered it in sufficient detail, and have demonstrated to my satisfaction that their decision to pursue the Order scheme is the appropriate one.
- 120 As set out above, the alternative proposed by OBJ02 would have a greater amount of above-ground development in Flood Zone 3, leading it to fail the Sequential and Exception tests. It would have a far greater infringement into the HS2 safeguarding area.
- 121 On that basis, I am content that the main alternative options considered by NR have been clearly set out, considered, and that the Order scheme is well justified.

²⁹ NR10

³⁰ NR16

³¹ INQ03

³² NR07, NR18

Matter 4. Likely impact on local businesses, residents and crossing users

Landscape, including hedging and trees

- 122 The Order scheme would be visible to local businesses, residents and crossing-users. The replacement footbridge would be obviously different to the existing, and the new access road and bridge would be just that; new.
- 123 However, it is clear to me from the LVIA³³ conclusions, evidence at the inquiry, and my own site visit, that landscape and visual effects would not be unacceptable. As noted in the LVIA, in landscape terms effects would range from 'minor adverse' to 'no change' and in visual terms, effects would fall from a 'medium' magnitude of impact, down to a 'low' magnitude of impact, subject to the maturation of the planting and landscaping schemes.
- 124 The extremely limited amount of hedging and tree removal proposed would also limit the impact of the Order scheme. The measures proposed to be taken to record, protect and retain the majority of the hedging and trees in the Order area appear robust and I have no reason to doubt their likely effectiveness. In addition, there is a requirement, within the planning conditions to submit for approval, and then implement, a detailed Landscape and Ecological Management Plan.
- 125 As such, I am satisfied that the Order would not have an unacceptable impact on local businesses, residents or crossing users, with particular regard to landscape, including hedging and trees.

Impact on drainage and flooding

- 126 Detailed flood modelling work, set out in the FRA has established that despite being within Flood Zones 2 and 3, the Order scheme would be safe from flooding and would not increase flood risk elsewhere. NR has carried out an ST to establish that there are no reasonably available sites appropriate for the Scheme in areas with a lower risk of flooding. Detailed design and modelling shows that the particular relationship of the at-grade and above-ground elements of the Order scheme (i.e. the roads, embankments and elevated bridge-structure) have been located to have the least impact on Flood Zone 3, and to reduce the amount of flood compensation storage required.
- 127 The detailed modelling of the effects of the Order scheme, and the evolution of its design to that proposed, with a combination of embankments and the elevated flood alleviation structure, demonstrate that the Order scheme would not cause any greater flood risk elsewhere than already exists.
- 128 Turning specifically to drainage, the Order scheme proposes to largely mimic the existing drainage of the Order land. Detailed work and modelling shows that through the use of drainage detention basins and swales,

³³ NR16, NR37

surface water generated by the Order scheme would be discharged to surrounding watercourses at the same rate as the current land-use and arrangements.

- 129 Measures are in place through the Order, and through specific letters of comfort to ensure that existing drainage features are protected and if necessary, replaced or repaired upon completion of the works.
- 130 The Order scheme drainage and flooding design and modelling have been approved by the Environment Agency and Lead Local Flood Authority. With regard to flooding and drainage, the Order scheme therefore satisfies planning requirements with regard to Sequential and Exception testing.
- 131 As such, I am satisfied that the Order would not have an unacceptable impact on local businesses, residents or crossing users, with particular regard to drainage and flooding.

Construction works on pedestrian and vehicle access

- 132 The phasing of the Order works and the wording of the Order itself mean that none of the level-crossings can be closed until such time as the new access road and new access track have been provided and are in use. There will be a short period where pedestrian access to the Rose Lane cottages will have to be taken via the new access road and bridge, whilst the footbridge is replaced. Whilst this is unfortunate, and will lengthen the pedestrian route to Church Fenton, it is not a permanent change, and there is no suggestion that it is otherwise an unacceptable impact. As the footbridge will be a replacement, there is no reasonably practical alternative to this.
- 133 There is likely to be a need for temporary traffic management on Common Lane, particularly in association with works to the new access road junction, and the provision of the construction compound on Rose Lane. This is not unusual.
- 134 Access to properties on Common Lane and the Rose Lane cottages will be maintained whilst the Order scheme works are carried out. Similarly, NR have committed to ensuring that access across Poulter's Level Crossing, which will be used for construction purposes, will not cause conflict with farm machinery movements. HGV movements and deliveries are to be managed through the submission, approval and implementation of both a CTMP and COCP, controlled through planning conditions. NR are committed to delivering as much material as possible to the site and compounds by rail.
- 135 The new access road is to be built to an adoptable standard, and it is anticipated that it will be adopted by the local highway authority upon completion, creating a right of way over it. No public right of way will however be created over the replacement footbridge, so it will remain private, as it currently is.

- 136 I therefore consider that subject to the commitments set out in their application and the conditions proposed for the DPP, construction works associated with the Order would not have an unacceptable impact on local businesses, residents or crossing users, with particular regard to pedestrian and vehicle access.
- 137 Overall, I find that the exercise of the powers in the proposed Order would not have any unacceptable impacts on local businesses, residents or crossing users. Construction effects would be temporary, landscape and visual effects would reduce over time, yet the Order scheme would lead to a marked and material increase in safety and convenience for those wanting and needing to cross the CFM.

Matter 5a. Whether a compelling case in the public interest

- 138 In bringing about the identified improvements to the NTPR, through delivery of the TRU, the Order scheme would contribute to the delivery of economic, social and environmental benefits for the whole of the region. There is a clearly made, and compelling need for the Order scheme.
- 139 On this basis and in the absence of clear evidence to the contrary I find that there is a compelling case in the public interest for the compulsory acquisition of land and rights. Moreover, NR has provided clear justification of the need for the land to be acquired.

Matter 5b. Whether the purposes are sufficient to justify interfering with the human rights of those with an interest in the land

- 140 Based on the compelling case in the public interest for compulsory acquisition, interference with the rights of those with an interest in the land affected is justified. The interference with Article 1 of the First Protocol of the Human Rights Act is engaged and having taken account of the public and private interests involved the case for compulsory acquisition has been made. The need for the TRU is clear and the benefits are considerable. The interference with the Article 1 rights is proportionate, lawful, limited in extent and mitigated as far as possible. Where acquisition is necessary compensation will be payable in accordance with the compensation code.

Matter 5c. Likely impediments

- 141 The Order scheme is supported by the government as part of the TRU programme. Funding is in place to implement it. Natural England have confirmed that they see no reason not to grant a European Protected Species Licence for the works affecting the common pipistrelle.
- 142 As such, I find that there are no likely impediments to NR exercising the powers contained within the Order.

Matter 5d. Whether all of the land and rights is necessary

- 143 Justification is provided for the inclusion of each individual plot required to implement the Order scheme including the purpose for each plot, whether it is for permanent works, temporary works or for rights to be secured to

provide alternative utility apparatus. No evidence has been provided that any land take or rights sought is excessive or unnecessary, and letters of comfort have been provided to address particular plots and circumstances of their use. NR has committed to minimising the amount of land to be permanently acquired and will restrict itself to temporary use or acquisition of rights over land where those are sufficient to deliver the Order scheme.

144 The land and rights over land which NR has applied for are therefore necessary to implement the scheme.

Matter 6. Conditions proposed to be attached to the DPP

145 I have been provided with a list of suggested planning conditions to attached to the DPP. These conditions have been produced in consultation with Selby District Council (now NYC) and agreed by them. I consider that the conditions, which relate to compliance with the approved drawings, development staging, landscaping and ecology, construction practice, traffic and travel, materials, means of enclosure, land contamination, biodiversity net-gain and archaeology are necessary, relevant to planning and to the development to be permitted, enforceable, precise and otherwise reasonable. There is policy support for, and need for the conditions, and clear links between matters raised in consultation and the conditions.

146 NR has agreed to the pre-commencement conditions listed. It is necessary and reasonable that the information required by these conditions be provided prior to the commencement of development, as these are matters which cannot properly or reasonably be addressed following the commencement of the development.

147 I am therefore satisfied that these conditions meet the tests in, and requirements of the NPPF.

Matter 7. Any other matters

148 There was much discussion at the inquiry, and reference in the objection of Mr Poulter to the issue of HS2 safeguarding, and in particular around the relationship of the proposed access road to it. NR state that the Order scheme has the smallest possible interface with the HS2 safeguarded area, that HS2 were consulted on the Order scheme and raised no objection to this, and that in any event, safeguarding is a management and protection tool, not a prohibition on development.

149 Mr Poulter suggests that if the level of intrusion of the Order scheme into the safeguarded area is acceptable, then the much greater intrusion which his proposed alternative location would lead to³⁴ must also be acceptable. He also states that this leg of HS2 has been scrapped and the safeguarding should be removed.

³⁴ NR32, fig 20

- 150 It is clear to me from the evidence of NR, and indeed, email exchanges submitted by Mr Poulter, that HS2 are satisfied with the relationship of the Order scheme to the safeguarded area. It is also clear to me that in spite of reporting around the future of HS2, the government is fully committed to providing better rail connectivity, set out in the Integrated Rail Plan, and as part of this, is making a holistic assessment of future rail capacity needs in this area. As a result, the government has, as recently as July 2023³⁵ stated that safeguarding will remain on the full eastern-leg route for HS2 until such time as it can definitively confirm any alternative choice or whether any part of the safeguarded route is still needed.
- 151 Given the status therefore of the HS2 safeguarding, the minimal interface between it and the Order scheme, and the lack of objection, I conclude that the Order scheme has an appropriate and acceptable relationship with HS2 safeguarding.
- 152 The Order application also includes a request for DPP. I have had regard to the assessment of the proposal³⁶ against the development plan, including policies in the Selby District Core Strategy Local Plan, saved policies in the Selby District Local Plan 2005 and policies in the Minerals and Waste Joint Plan 2022. I have also had regard to government policy in the NPPF, as well as national and local transport policy.
- 153 The site lies within the South and West Yorkshire Green Belt where inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, as the Order scheme is for local transport infrastructure, which can demonstrate a requirement for a Green Belt location, it is not inappropriate development provided it would preserve the openness of, and not conflict with the purposes of including land within the Green Belt. Given my conclusions on the landscape and visual effects of the Order scheme, including the LVIA evidence, I am satisfied that the Order scheme would preserve the openness of the Green Belt, and would not conflict with the purposes of including land within it. The Order scheme is not therefore inappropriate development in the Green Belt.
- 154 Having taken into account the effects of the proposal, I am satisfied that it complies with the development plan in respect of design, effect on agricultural soil quality and land, biodiversity, climate change matters, landscape and visual impact, noise and vibration, traffic and transport, waste and minerals, the water environment, and any effects on amenity.
- 155 I also note the alignment of the Order scheme with the presumption in favour of sustainable development at the heart of the NPPF with regard to improving public transport in the area and delivering the economic and social benefits which flow from that.

³⁵ INQ06

³⁶ NR13, NR18, NR34

The objections

156 I have carefully considered the remaining objections to the Order. In this respect I have dealt with most of the issues raised in addressing those matters specified in the SoM above.

OBJ01 – Mr Boddy

157 Regarding Mr Boddy's objection I am satisfied that the drainage proposals have been scrutinised in detail; during the development of the Order scheme by relevant experts and consultees and explained in detail at the inquiry. In light of that, plus the letters of comfort from NR to Mr Boddy, I am satisfied that his objection and concerns have been appropriately dealt with and can and will be addressed by NR as the Order scheme progresses.

OBJ02 – Mr Poulter

158 Regarding Mr Poulter's objection, as set out above, I am satisfied that all statutory procedural requirements have been complied with, and the Order scheme did not require an Environmental Statement.

159 I note his desire to see NR fully consider his proposed alternative in order for me to compare the two. However, NR have set out clear reasons for their choices and the scheme they have applied for, and in doing so made clear why his proposed alternative is not suitable or practical. They have also addressed his alternative in detail during the inquiry. I am not convinced that it would secure the benefits he ascribes to it, particularly in relation to screening in long views from the west (from where the Order scheme is already screened by existing vegetation), highway safety (to which there are no objections) or a shorter journey for one farmer weighed against a longer journey for residents of the Rose Lane cottages.

160 I note the Parish Council support for his objection and proposed alternative, but do not find the sentiment within it is borne out or otherwise supported by the consultation exercise (NR7) or indeed, representations or objections to the Order application before me.

161 I accept that views from Willow Farm New House would be different to existing, and that there is a very slightly different view from the house than from the viewpoint assessed in the LVIA. However, I do not consider the viewpoint to be so different that the conclusions on visual effects assessed from it are so substantially different to those from Willow Farm New House, such that there would be any unacceptable visual effect on Mr Poulter. I also accept that landscaping takes time to mature.

162 Specifically concerning the potential for increased noise and disturbance, I note that Willow Farm New House already faces onto Common Lane, a public highway, with windows front and back. To the side, towards the new junction and access road, there is a small area of side-garden, then a substantial hedge. The proposed access road is then within that field, some distance from the house. Given the limited amount of traffic and use that the new access road would be expected to see (limited to access for the Rose Lane cottages and the movements associated with the Poulter's and

Adamsons level-crossings), I do not consider that the use of the road would cause an unacceptable amount of noise and disturbance. I note also, as set out above, that the Order scheme, and specifically the removal of the level-crossings, would reduce the number of audible warnings associated with them.

- 163 Mr Poulter's concerns over badgers are noted, and there is sufficient coverage in the proposed survey methodology, protected species and ecology requirements to ensure that they are protected as appropriate. His further specific concerns over access to Plot 11 for grazing and access have been addressed in a letter of comfort from NR³⁷, and are addressed long-term in NR's approach to permanently acquiring the minimum amount of land possible, noting that Plot 11 is required largely for the construction compound, which will be temporary, and for an overhead line diversion, which will take only a small part of the plot.
- 164 I have considered above whether the purposes for which compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected. As set out, these rights are qualified rights, and interference with them is permissible where there is a clear legal basis and it is necessary in a democratic society. Notwithstanding my conclusions that the Order scheme, particularly with regard to noise, disturbance and visual effects would not have an unacceptable impact on Mr Poulter, any interference with his human rights is limited and proportional to the public end sought to be achieved by the Order.
- 165 Overall therefore, whilst I can understand Mr Poulter's objection to the Order scheme, I do not find that it is so substantial, or that the matters of detail it raises are such that the Order scheme is otherwise unsuitable or would have unacceptable effects upon him. In this, I also note that he does not object to the principle of the Order scheme.

Overall conclusions

- 166 Having considered all of the relevant matters raised, and those on which the SoST specifically directed that they wished to be informed above, I find that none of them are sufficient to prevent the Order from being made.
- 167 In the light of the above, I conclude that the Order is justified on its merits and that there is a compelling case in the public interest for making it, with clear evidence that the substantial public benefits from the public transport improvements and economic development, would outweigh the extremely limited private harm due to private losses. It would accord with relevant, national, regional and local policies. There is significant support for the TRU and outstanding issues raised in representations are subject to ongoing dialogue with NR. Funding is available for the project and there are no significant impediments to its implementation. Consequently, there is a reasonable prospect of it going ahead without delay.

³⁷ INQ12

168 There is no alternative Order scheme before me, nor are any modifications to it proposed.

RECOMMENDATIONS

The Network Rail (Church Fenton Level Crossing Reduction) Order 202[x]

169 Having regard to all of the above, I recommend that the Order, (subject to the corrections in the version handed up during the inquiry (INQ11.2)) be made.

Deemed Planning Permission

170 I also recommend that the application for deemed planning permission should be granted subject to the suggested conditions, set out in Appendix E to this report.

S Dean

INSPECTOR

APPENDIX A - APPEARANCES

FOR NETWORK RAIL:

Jacqueline Lean,
Counsel, instructed by Winckworth Sherwood LLP, called;

David Vernon BA (Hons) Dip TP, Senior Sponsor for Network Rail, Carter Jonas
Michael Westwood BSc (Hons), Principal Engineer (Level Crossings), Systra
Carl Pelling BSc (Hons) MSc MCIWEM, Technical Director (Water), AECOM
Rebecca Condillac BA (Hons) Grad Dip CMLI, Associate Director, AECOM
Alex Davies BSc (Hons), Head of Consents and Environment Planning, NR
Emma Foster BA (Hons) MA MRTPI, Town Planner, NR
Benjamin Thomas BSc MSc MRICS, Partner, Carter Jonas

FOR OBJ02, MR RONALD POULTER:

Mr Charles Poulter
Mr Stuart Hillard
Mr Andrew Mason, Chair of Church Fenton Parish Council

APPENDIX B - DOCUMENTS SUBMITTED DURING THE INQUIRY

INQxx

- 01 Amended draft Order (8 August 2023) – tracked changes version
- 02 Amended draft Order (8 August 2023) – clean version
- 03 Legal Compliance file
- 04 Opening statement for Network Rail
- 05 Opening statement for Mr Poulter (his statement of case)
- 06 DfT Policy paper 'HS2 to Leeds Study terms of reference, 17 July 2023
- 07 Updated Landscape and Ecological Mitigation Proposals Plan (151666-TRA-91-CFM-REP-W-EN-000015, Rev P05
- 08 Natural England letter of comfort regarding draft licence application, 4 August 2023
- 09 Supplementary note relating to planning conditions
- 10 Technical note relating to badger setts
- 11.1 Amended draft Order (10 August 2023) – tracked changes version
- 11.2 Amended draft Order (10 August 2023) – clean version
- 12 Network Rail letter to Mr C Poulter 10 August 2023
- 13.1 Mr Boddy letter to DfT TIPU 4 August 2023
- 13.2 Network Rail letter to Mr Boddy 10 August 2023
- 14 Closing statement of Mr Poulter
- 15 Closing statement of Network Rail
- 16 Correspondence file

APPENDIX C - CORE DOCUMENTS

NRxx

- 01 Document Schedule
- 02 Draft Order
- 03 Explanatory Memorandum
- 04 Statement of Aims
- 05 Funding Statement
- 06 Estimate of Costs
- 07 Consultation Report
- 08 Book of Reference
- 09 Works and Land Plan
- 10 Screening decision
- 11 Rule 18 Waiver
- 12 Request for Deemed Planning Permission and Statement of Proposed Conditions
- 13 Planning Statement
- 14 Planning Drawings 01-12
- 15 Design and Access Statement
- 16 Environmental Report
 - Volume 1 – Main Text
 - Volume 2 – Figures
 - Volume 3 – Appendices
- 17 Code of Construction Practice
- 18 Statement of Case
- 19 Decision Letter for Huddersfield to Westtown Improvements Order
- 20 Signalling Design Module X01 Level Crossings General
- 21 Signalling Design Module X40 Level Crossings Miniature Stop Lights
- 22 Commitment letter to SDC
- 23 Commitment letter to NYC
- 24 Network Rail Transforming Level Crossings 2015-2040
- 25 ORR Health and Safety Strategic Risk Chapter 4 Level Crossings
- 26 Levelling Up the United Kingdom White Paper
- 27 Integrated Rail Plan for the North and Midlands 2021
- 28 The National Infrastructure Delivery Plan
- 29 Transport for the North Strategic Transport Plan
- 30 National Planning Policy Framework
- 31 Proof of Evidence – Needs Case
- 31A. Summary – Needs Case
- 32 Proof of Evidence – Engineering and Design
- 32A Summary – Engineering and Design
- 33 Proof of Evidence – Property
- 33A Summary – Property
- 34 Proof of Evidence – Planning
- 34A Summary – Planning
- 35 Proof of Evidence – Environmental Management
- 35A Summary – Environmental Management
- 36 Proof of Evidence – Flood Risk
- 36A Summary – Flood Risk
- 37 Proof of Evidence – Landscape and Visual Amenity

- 37A Summary – Landscape and Visual Amenity
- 38 Decarbonising Transport – A Better, Greener Britain
- 39 Traction Decarbonisation Network Strategy
- 40 Connecting people: a strategic vision for rail
- 41 Enhancing Level Crossing Safety 2019-2029
- 42 ORR Principles for Managing Level Crossing Safety
- 43 ORR Strategy for Regulation of Health and Safety Risks
- 44 ORR Level Crossings – A Guide to Managers, Designers, Operators
- 45 National Infrastructure Strategy
- 46 Inspector Report for Huddersfield to Westtown Improvements Order
- 47 DfT Rail Network Enhancement Pipeline 2018
- 48 DfT Rail Network Enhancement Pipeline 2019
- 49 North Yorkshire Local Transport Plan
- 50 West Yorkshire Transport Strategy 2040
- 51 Leeds City Region Strategic Economic Plan
- 52 Selby District Core Strategy October 2013
- 53 Selby District Local Plan February 2005 Saved Policies
- 54 Selby District Council Local Plan Publication Version Consultation 2022
- 55 Part 18 of The Town and Country Planning (General Permitted Development) (England) Order 2015
- 56 National Policy Statement for National Networks 2014
- 57 Letter from Selby District Council to TIPU 5 October 2022
- 58 Minerals and Waste Joint Plan 2015-2030, Adopted February 2022

APPENDIX D – CONTRIBUTORS

SUPPORTERS

SUPxx

- 01 Freightliner Group Limited
- 02 Northern Trains Limited
- 03 Transpennine Express
- 04 P & J Squires
- 05 Selby District Council
- 06 J Rushby

OBJECTORS

OBJxx

- 01 Mr Jon Boddy
- 02 Mr Ronald Poulter

OTHER REPRESENTATIONS

REPxx

- 01 Helen West and Steve Bowring
- 02 John Rushby
- 03 Mark and Darlene Wheldrick
- 04 Mr Hussey and Ms Worrell
- 05 Northern Powergrid
- 06 Environment Agency
- 07 Royal Mail
- 08 North Yorkshire Council
- 09 Barry Jones
- 10 Simon Peacock
- 11 Mr and Mrs Ratcliffe

APPENDIX E - RECOMMENDED CONDITIONS TO BE ATTACHED TO DEEMED PLANNING PERMISSION

Interpretation

In the following conditions—

“the Code of Construction Practice” means the code of construction practice to be submitted to and approved by the local planning authority under condition 5 (code of construction practice), a draft of which (known as “Part A”) accompanies the Environmental Assessment Report;

“the development” means the development authorised by the Order;

“the Environmental Assessment Report” means the environmental information submitted with the application for the Order on 28th July 2022;

“the local planning authority” means Selby District Council until 31st March 2023; thereafter the planning authority will be the North Yorkshire Council;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order” means The Network Rail (Church Fenton Level Crossing Reduction) Order 202[X];

“the Order limits” has the same meaning as in article 2 (interpretation) of the Order;

“the planning direction drawings” means the drawings listed in Appendix 3 to the request for deemed planning permission dated 28th July 2022;

“preliminary works” means environmental (including archaeological) investigations, site or soil surveys, ground investigations and the erection of fencing to site boundaries or the marking out of site boundaries; site clearance and de-vegetation; and the erection of contractors’ work compounds, access routes and site offices

“the railway” means the railway comprised in the development;

The “site” means land within the Order limits;

“SDCS” means the Selby District Core Strategy 2013

“SDLP” means the Selby District Local Plan 2005

Conditions

1. TIME LIMIT FOR COMMENCEMENT OF DEVELOPMENT

The development hereby permitted must commence before the expiration of five years from the date that the Order comes into force.

Reason: To ensure that development is commenced within a reasonable period of time.

2. IN ACCORDANCE WITH THE PLANNING DIRECTION DRAWINGS

The development must be carried out in accordance with the planning direction drawings unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that the development is carried out in accordance either with the consented design or such other design details as have been subjected to reasonable and proper controls.

3. STAGES OF DEVELOPMENT

No development (including preliminary works) is to commence until a written scheme setting out all the stages of the development has been submitted to and approved in writing by the local planning authority. Variations to the approved stages of development may be submitted to and approved in writing by the local planning authority. Thereafter the development shall be undertaken in accordance with the approved stages of development. Written notification shall be given to the local planning authority of commencement within each stage, not later than 21 days following commencement within the respective stage.

Reason: To identify the individual stages for the purposes of these conditions.

4. LANDSCAPING & ECOLOGY

No development within the relevant stage (including preliminary works) is to commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The approach to the LEMP should be in broad accordance with plan 'Outline Landscape and Ecological Mitigation Proposals' (Figure 6.5) Ref 151666-TRA-91-CFM-REP-W-EN-000015 Revision P05 and the details set out within Network Rail's Letter of Commitment dated 4th October 2022 (Ref 151666-TRA-E4-000-LTR-W-LP-000354).

- a) The proposed LEMP for each stage will include the following details:
- i) An Arboricultural Method Statement (to BS5837:2012); to comprise works and recommendations, as set out in Environmental Report NR16 Chapter 12 Arboriculture (including all mitigation and details as set out in chapter 12.6).
 - ii) Those trees and hedgerows shown to be retained in Environmental Report NR16 Chapter 12 Arboriculture 'Tree Protection Plans' Figures 12.2 (four sheets), shall be retained.
 - iii) A plan of ecological mitigation details including areas of new plantings and details of any habitats created or enhanced.
 - iv) Implementation timetable and a programme for initial aftercare, long term management and maintenance responsibilities for a period of 5 years post-completion for landscape purposes.
 - v) Details of organisation(s) responsible for maintenance and monitoring.

b) The LEMP must reflect the survey results and ecological mitigation and enhancement measures set out in the Environmental Report (Chapter 8 Biodiversity), and must also include the following ecological measures:

- i) The aims and objectives of the management to be undertaken.
- ii) A programme of monitoring with thresholds for action as required
- iii) Full details of measures to ensure protection and suitable mitigation to all relevant protected species

c) The LEMP must include both hard and soft landscaping works, covering the locations where landscaping will be undertaken, and must also include the following details:

- i) Full detailed landscape plans indicating full planting specification, including layout, species, number, density and size of trees, shrubs, plants, hedgerows and/or seed mixes and sowing rates, including extensive use of native species;
- ii) Any structures, such as street furniture, any non-railway means of enclosure and lighting;
- iii) Any details of regrading, cut and fill, earth screen bunds, existing and proposed levels;
- iv) Any areas of grass turfing or seeding and depth of topsoil to be provided;
- v) A timescale for the implementation of hard landscaping works;
- vi) Details of monitoring and remedial measures, including replacement of any trees, shrubs or planting that fail or become diseased within the first five years initial aftercare period from completion; and
- vii) Details of protective measures for retained trees.

The measures within the LEMP must be implemented in accordance with the approved details.

Reason: In order to provide effective screening and landscaping to protect the character and appearance of the surrounding open countryside and Green Belt having had regard to Policy ENV1 of the SDLP, Policies SP3, SP15 and SP19 of the SDCS and the National Planning Policy Framework (July 2021). This is to secure the correct implementation of the measures identified in the Environmental Report.

5. CODE OF CONSTRUCTION PRACTICE

a) No part of the development (including preliminary works) is to commence until a Code of Construction Practice (CoCP) Part B, including the relevant plans and programmes referred to in (b) below (which incorporates the means to mitigate the construction impacts identified by the Environmental Report), has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt this does not include approval for Part A of the CoCP (a general overview and framework of environmental principles and management practice to be applied to the scheme along with all construction-led mitigation identified in the Environmental Report) which has been submitted as part of the Order.

b) Part B of the CoCP (as defined at paragraph 3.3.5 in Environmental Report NR16 Volume 1) must include the following plans and programmes:

- i. An external communications programme
- ii. A pollution prevention and incident control plan
- iii. A waste management plan
- iv. A materials management plan including a separate soils mitigation plan
- v. A nuisance management plan concerning dust, wheel wash measures, air pollution and temporary lighting; and
- vi. A noise and vibration management plan including a construction methodology assessment

The development must be implemented in accordance with Parts A and B of the approved CoCP, along with the relevant plans or programmes, unless otherwise agreed in writing with the local planning authority. The approved CoCP (parts A and B) shall be implemented in full throughout the period of the works.

Reason: To mitigate expected construction impacts arising from the development and to protect local and residential amenity and to ensure the development is carried out in accordance with Policies ENV1 and ENV2 of the SDLP and SP18 and SP19 of the SDCS.

6. CONSTRUCTION TRAFFIC MANAGEMENT & TRAVEL PLAN

- a) No part of the development (except preliminary works) is to commence until a Construction Traffic Management Plan ("CTMP") has been submitted to and approved in writing by the local planning authority. The CTMP must include:
- i. the package of interventions and mitigation outlined in the Environmental Assessment Report including an implementation timetable for each stage;
 - ii. a travel plan for construction staff outlining the methods by which they shall be transported to the relevant sites and including the provision of non-motorised facilities to encourage walking and cycling;
 - iii. Details on temporary diversions of both highways and rights of way required as part of the Scheme.
 - iv. A Traffic and HGV Routing Plan for construction traffic and a method statement for how this will be communicated with any contractors.
 - v. The construction of each stage of the development must be carried out in accordance with the approved CTMP unless otherwise agreed in writing with the local planning authority.
- b) The construction must be carried out in accordance with the approved CTMP unless otherwise agreed in writing with the local planning authority.

Reason: To protect public amenity and highway safety and in accordance with Policies ENV1, T1, T2 and T8 of the SDLP and Policies SP15 and SP19 of the SDCS.

7. MATERIALS

Before the commencement of any works in respect of structures listed below, samples and specifications of all materials to be used on all their external elevations must be submitted to and approved in writing by the local planning authority:

- i) Highway Bridge
- ii) Footbridge

The development must be constructed in accordance with the approved details and thereafter retained unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of visual amenity and to ensure the proposals respect the character of the open countryside and the Green Belt in accordance with Policy ENV1 of the SDLP, Policies SP3 and SP19 of the SDCS.

8. MEANS OF ENCLOSURE

No later than 6 months after the commencement of the works, details of all new permanent means of enclosure for the new road and residents' car parking area must be submitted to and approved in writing by the local planning authority. The approved means of enclosure must be erected in full in accordance with the approved details and retained thereafter unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of public safety and visual amenity and to ensure that the proposals respect the character of the open countryside and do not compromise the openness of the Green Belt in accordance with Policy ENV1 of the SDLP, Policies SP3 and SP19 of the SDCS.

9. UNEXPECTED CONTAMINATED LAND

In the event that visual or olfactory evidence of contamination not previously encountered in the intrusive ground investigation is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV2 of the SDLP and Chapter 15 of the NPPF (July 2021)

10. BIODIVERSITY NET GAIN

Before the Order scheme commences (excluding preliminary works) a strategy to achieve an overall 10% net gain in biodiversity for the development, including monitoring, maintenance, management and reporting arrangements, must be submitted for approval in writing by the local planning authority. The strategy shall include a monitoring and maintenance schedule covering a period up to 30 years in compliance with the Biodiversity Metric 3.0- User Guide & Technical Supplement. From the first opening of the road bridge to vehicles measures to achieve an overall 10% net gain in biodiversity for the development (assessed in accordance with the 2021 Department for Environment, Food & Rural Affairs biodiversity metric 3.1) shall be implemented in accordance with the approved strategy.

Reason: In order to provide biodiversity net gain having had regard to Policy ENV1 of the SDLP, Policy SP18 of the SDCS and the NPPF (July 2021).

11. ARCHAEOLOGY

A) No demolition/development within the relevant stage shall take place/commence until a programme of archaeological work for that stage including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- i. The programme and methodology of site investigation and recording
- ii. The programme for post investigation assessment
- iii. Provision to be made for analysis of the site investigation and recording
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation
- v. Provision to be made for archive deposition of the analysis and records of the site investigation
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development within the relevant stage shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

Reason: To ensure that the significance of the historic environment is properly assessed and preserved and to ensure that the development is carried out in accordance with paragraphs 189 and 199 of the National Planning Policy Framework (2021), and policy ENV 28A, 28B & 28C of the Selby Local Plan.

12. APPROVAL AND IMPLEMENTATION UNDER THESE CONDITIONS

Where under any condition the Local Planning Authority may approve amendments to details submitted and approved, such approval must not be given except in relation to changes where it has been demonstrated to the Local Planning Authority that the approval sought is unlikely to give rise to any materially new or materially different adverse environmental effects from those assessed in the Environmental Assessment Report.

Reason: To provide for certainty in the approvals and implementation process and in the interests of proper planning