



# Department for Transport

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By email.

Dear Ms Jones,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, K R Saward Solicitor MIPROW, who held an Inquiry between 18 June and 3 July 2024, into the application made by your client, Network Rail Infrastructure Limited ("NR"), for the proposed Network Rail (Tackley Level Crossing) Order ("the Order") under sections 1 and 5 of the Transport and Works Act 1992 ("the Act").
2. Enclosed with this letter is a copy of the Inspector's Report. All "IR" references in this letter are to the specified paragraph in the Inspector's Report.
3. Consideration has also been given to the responses received on 13 January, 24 February and 5 March 2025 to the consultation undertaken by the Secretary of State on 10 December 2024 which sought further information and clarification from NR and from Mr Peake (OBJ/70) with regard to the alternative option known as 'Route D'.
4. The proposed Order would authorise the permanent closure of the level crossing at Tackley in Oxfordshire. The portion of existing public bridleway (379/2/10) which crosses the railway line would be stopped up with the residual extent of the bridleway remaining open. The Order would also provide for the upgrading of an approximately 60m length ("the 60m stretch") of existing footpath (379/16/20) to the west of the railway line to be redesignated as bridleway and creation of a new public bridleway ("NB") running adjacent to the west side of the railway line for a length of approximately 860m to connect with the existing un-named lane sometimes referred to as Whitehill Lane or Old Whitehill Lane.
5. A new stepped footbridge with lifts, authorised through permitted development rights under the Town and Country Planning (General Permitted Development) (England)

Order 2015, would be provided at Tackley Station for pedestrian access between platforms and is further considered at paragraph 7 of this decision letter. The Order would confer powers on NR for the compulsory acquisition of rights in land and temporary use of land in connection with the provision of the footbridge, the closure of the level crossing and the construction of the NB and temporary construction compounds as well as the temporary stopping up of rights of way for works to be undertaken.

6. The draft Order originally submitted provided for the permanent acquisition of land for the delivery of the NB. Through consultation with Oxfordshire County Council NR became aware that the acquisition of rights in the land would be sufficient for the creation of the NB and a revised draft Order was submitted the day before the opening of the Inquiry with all powers of permanent land acquisition removed (IR 1.32). Oxfordshire County Council also contributed to the modifications session at the Inquiry regarding possible amendments to address their concerns over the drafting of the Order (IR 1.33). The Secretary of State also notes (IR 1.4) that the southern end of the NB was amended during the course of the Inquiry to a position along the outer edge of the field as shown by a pink line in the Updated Land and Rights of Way Plans (Document APP07-2). The Secretary of State is satisfied that these changes do not represent a significant change to the proposed Scheme to the degree that a new application would be required.
7. Although not part of the Order, NR intends to allow public access over the footbridge to non-railway users, including pedestrians and cyclists on foot, to enable them to connect to the existing bridleway. This access would, however, be on a permissive basis only (IR 1.7).
8. NR requested a screening decision from the Secretary of State as to whether an Environmental Impact Assessment ("EIA") was required for the Order application (which at the time also included Sandy Lane and Yarnton Level Crossings) and the then Secretary of State in his letter dated 27 April 2023 considered that the project would not have a likely significant effect on the environment and determined that an EIA was not required.

### **Summary of Inspector's Recommendations**

9. The Inspector recommended that the Order, as submitted and revised, is not made and that the Secretary of State proposes modifications to the Order to (i) substitute the proposed new bridleway for a bridleway along an alignment shown in the approximate position of Route D (see Appendices D and E of IR) and (ii) to record the position of gates along the route to British Standard BS5709:2018. As this would be a substantial change to the proposals, the Inspector recommended that, in accordance with section 13(4) of the Act, the proposed modifications be consulted upon and any representations considered before deciding whether to make the Order with the modifications.
10. The Inspector also recommended that, should the Secretary of State be minded not to propose the Route D modification and to make the Order as submitted and revised, the Order should nevertheless be modified in accordance with the first bullet point of IR 7.4 to record the gates as a limitation. No further consultation would be required in relation to this.

## Summary of Secretary of State's views

11. For the reasons explained at paragraphs 12 to 61 of this letter, the Secretary of State considers that she is not yet in a position to decide whether to accept the Inspector's recommendation set out at IR 7.3. The Secretary of State is currently **minded not to approve** the application. This is, however, subject to consideration of any further views submitted by NR and other parties as detailed below.

## Procedural Matters

12. NR applied for a waiver direction under rule 18 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the 2006 Rules") to disapply the requirements of rules 10(2) and 13(1) of the 2006 Rules, which require NR to submit hard copies of each of the application documents. NR requested permission to submit an electronic copy of the application documents to the then Secretary of State and serve the documents on affected local authorities electronically; undertaking to provide hard copies if requested. On 7 July 2023, the then Secretary of State confirmed he was content that the application documents could be submitted electronically and for hard copies to be made available upon request at any time before a decision on the application is issued.
13. A Pre-Inquiry Meeting ("PIM") was held remotely on 21 May 2024 to discuss procedural matters to assist in the efficient and expeditious conduct of the Inquiry (IR 1.11). The Inspector reports that complaints were subsequently made by the Byways and Bridleways Trust ("BBT") (OBJ/51) and Tackley Parish Council ("TPC") (OBJ/63). BBT considered that the short timescale, volume of material produced by NR and failure to run the Inquiry virtually had compromised its position. The Secretary of State notes that BBT brought its case within that of the British Horse Society ("BHS") (OBJ/60), that the Inspector did not rule out a virtual element and such options were being explored and that no requests were made for an extension of time for submission of Proofs of Evidence (IR 1.16).
14. TPC considered that it had been disadvantaged due to not being in a position to fund a Barrister and that the outcome would be unfair. It also considered the length of the Inquiry to be excessive and that this impeded full representation due to its councillors being volunteers. TPC was of the opinion that communication from the Inquiry over the dates on which it was required was insufficient and stated that it had been unable to discuss matters due to the pre-election period (IR 1.12). The Secretary of State notes that TPC attended the PIM, that a draft timetable was published which took account of witness availability, that it was made clear that the Inspector wished to hear from unrepresented parties and that it was suggested that a nominated spokesperson could be appointed where people wished to make the same point (IR 1.13). She also notes that the running order was adjusted throughout the Inquiry to accommodate witness availability, that TPC representatives were present on most days and took the opportunity to put their questions to NR (IR 1.14). She has further taken into account that the position of TPC corresponded largely with other objectors, including BHS who were professionally represented. Closing submissions were heard remotely and written closings were invited from parties unable to attend on the allocated day including TPC (IR 1.15).

15. The Secretary of State also notes NR's procedural concerns that the updated Proof of Evidence of Mrs Eeley (on behalf of BHS) constituted a rebuttal proof produced outside the timescale set out at the PIM (IR 1.23). The Secretary of State acknowledges the Inspector's comments at IR 1.25 and is content that no party has been disadvantaged either in this regard or in relation to the matters at paragraphs 13 and 14 above.
16. The Secretary of State has complied with the Public Sector Equality Duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with sections 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not.

### **Secretary of State's Consideration**

17. In response to the application, a total of 79 objections were received. There were two supporters and one neutral representation. The Inspector reports that none of the objections had been formally withdrawn by the close of the Inquiry, although some grounds of objection were resolved for Mr Peake and Mr Ridout (OBJ/01) during the course of the Inquiry (IR 1.9).
18. Careful consideration has been given to all the arguments put forward by, or on behalf of, all parties. The Secretary of State's initial consideration of these, the further clarification and comments received from NR and Mr Peake and the Inspector's report, is set out in the following paragraphs. Where not specifically stated, the Secretary of State can be taken to agree with the findings, recommendations and conclusions put forward by the Inspector.

### ***Aims, objectives and need for the Scheme***

19. The fundamental objectives of the Scheme, as detailed in the updated Statement of Aims of 17 June 2024, are to improve safety, improve service delivery, contribute to improvements in local transport and deliver cost efficiencies (IR 5.10). The Scheme will permanently regularise the current temporary closure of the level crossing which has been in place since April 2020 on safety grounds (IR 1.8 and IR 4.53). Tackley Level Crossing ("TLC") has been assessed as unsafe for users and is 'non-compliant' in terms of sighting distance deficiency (IR 4.4). There is a history of misuse and near-miss incidents, and a fatality event occurred in March 2008. The Inspector reports, at IR 4.5, of the 'hidden train factor' situation at this level crossing where sight of an oncoming train is impaired by a stationary train. TLC has been assessed by NR as falling within the top 10% of the 545 level crossings on the Western Route (from London Paddington to Penzance) in terms of risk and therefore a priority for closure (IR 4.32). NR's case for the Scheme also indicates that the permanent closure of the level crossing would bring such benefits as contributing to unlocking additional freight capacity (thus bringing significant environmental benefits (IR 4.10)), increased passenger train capacity, an increase in line speed, uninterrupted train performance through TLC, improved journey times and experience, reduced exposure to financial liabilities and net maintenance savings (IR 4.8).
20. At IR 5.15, the Inspector reports that, at the time of the PIM, BBT were the only party who appeared to question the need for the closure but that it did not actively advance

its case or explain its reasoning for considering the closure on safety grounds to be unmerited. Whilst at the Inquiry Mrs Machin (OBJ/25) and Mrs Collier (OBJ/48 - in a personal capacity) challenged the need for closure on safety grounds, the Inspector explains that it became apparent that although they considered it safe for use by equestrians when used correctly they did accept that it should be closed on safety grounds (IR 5.16).

21. The Secretary of State notes that NR has stated that there are no additional improvements that could be made to improve safety at the crossing (IR 5.19), and the observation made by the Inspector that there is little resistance to the need to close it on safety grounds. She is in agreement with the Inspector's conclusions at IR 5.18 and IR 5.32 that TLC cannot reasonably be made safe for ongoing use by the public and that there is a clear and compelling case for permanent closure of the level crossing and extinguishment of the corresponding section of the existing bridleway. She is, therefore, satisfied that the Scheme is needed. The Secretary of State notes the Inspector's analysis at IR 5.20 to IR 5.25 regarding the effects on railway operations in terms of service delivery, local transport and cost efficiencies and agrees with the Inspector's conclusions at IR 5.25 regarding the likely performance and local transport benefits. She recognises the economic benefits which would be delivered through the Scheme's contribution to the aim of increasing passenger and freight service capacity along the Oxford corridor. The Secretary of State is content that the Scheme will have a positive effect on railway operations. She is satisfied that a suitable case has been made to justify the aims, objectives and need for the Scheme and, in agreement with the Inspector at IR 5.32, is satisfied that the aims and objectives for the Scheme would be met.

### ***Compliance with statutory requirements and adequacy of consultation***

22. In making the application, NR is required to comply with the publicity requirements of the 2006 Rules. This includes serving copies of the application and accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As is also required by the 2006 Rules, NR must display and publish notices giving information about the application and how to make representations. The Secretary of State has had sight of NR's sworn affidavit in relation to the publication and service of notices.
23. The Secretary of State notes the Inspector's analysis at IR 5.3 to IR 5.9 and that although some objectors consider consultation to have been inadequate there is no evidence to suggest non-compliance with the statutory requirements (IR 5.9). She notes that the date error in the initial pre-application notice of intention to apply for the Order was corrected in post-application notices clarifying that the documents would be available for inspection at the local library until the end of the objection period (IR 5.6).
24. At IR 5.26 the Inspector notes that some objectors mistakenly believe that the existing bridleway would be extinguished in its entirety rather than just the section crossing the railway line where TLC would be closed and that this goes some way in demonstrating a lack of clarity in NR's messaging to the public. The Secretary of State notes the Inspector's comments at IR 5.29 – IR 5.30 regarding the apparent inconsistencies in the sequence of events detailed in the Inquiry documents and the inaccurate diagram included in NR's published leaflet. She understands that the error

in the leaflet was corrected in subsequent documents and presentations. Given that there is no evidence of anyone having actually been misled by the leaflet the Secretary of State agrees with the Inspector that this does not invalidate the consultation process. The Secretary of State acknowledges the dissatisfaction of the objectors with regard to NR's communications but, in agreement with the Inspector at IR 5.31, as parties had sufficient understanding to enable them to engage in the Inquiry process and to raise their concerns, she is satisfied that the public consultation conducted was adequate. The Secretary of State is content that all statutory procedural requirements have been complied with.

***Main alternatives, reasons for choosing preferred option and safety case for extinguishing the bridleway at the level crossing***

25. The Scheme seeks to extinguish the section of existing bridleway over TLC which would result in the remainder of the existing bridleway to the east of the railway becoming a cul-de-sac only accessible to the public via the restricted byway to the south of the station (IR 5.35). A number of options for the provision of an alternative right of way have been considered over a number of years as detailed in Table 3 at paragraph 6.1 of NR's updated Statement of Case (SOC-NR-1).
26. NR had initially hoped to progress with an equestrian subway at the existing location of TLC, however this proved to be unviable on financial and engineering grounds. This led to a review of the optioneering undertaken in 2020 on which NR had commissioned an Independent Assessment ("IA"). The IA in April 2022 assessed 11 options and reported that NR's preferred option was Option C (the route known as 'the infield route' or 'Route D') but the report recommended Option B (the NB now pursued) as having least disruption to the existing field use. The construction of an acoustic/visual barrier to increase horse safety along the stretch from the station for Option C (Route D) was considered to have adverse environmental impacts but no such barrier is included in the proposed Scheme (IR 5.37 – IR 5.39).
27. Route D was taken forward to 'Approval in Principle' design but was discounted by NR as an option due to the landowner Mr Peake's concerns about the impact on land use, and possibly access, of splitting the field in two thereby minimising the use of the land and proposals for livestock grazing. He also required the stopping up of the whole of the existing bridleway on his land and the carrying out of extensive works to the Old Whitehill underpass which would be used by NR for access to Tackley Station for construction purposes. The Secretary of State notes, however, that Mr Peake also demands works to the underpass for the NB and that he wishes the existing bridleway on his land to become a permissive path whether the Order is made for the proposed Scheme or for Route D (IR 5.41).
28. As a result of Mr Peake's conditions, which were outwith the scope of the Scheme, the NB was considered by NR as the only deliverable option. NR stated that consultation showed that there would be local opposition to extinguishment of the existing bridleway (IR 5.42) and it was confirmed that a levelled metalled surface would be provided to facilitate its construction traffic but additional works to lower the track would not be carried out (IR 5.44). The Inspector reports at IR 5.45 that no evidence was presented that the track beneath the railway bridge would need to be lowered to accommodate construction traffic and for the Order to be deliverable.

29. Further options included Option D in the IA which was a variant of Route D but avoiding the 60m stretch and routing equestrian users down Lime Kiln Road and thereby through a residential area. The Inspector reports that this option was supported by TPC but not BHS at the Inquiry. The views of residents and potential users had not been canvassed for the Inquiry (IR 5.40). TPC's preferred option of a bridge north of the station (Barwood Bridge) (IR 2.59) was also unviable in engineering and cost terms and two bridges would, in fact, be required due to the distance between Tackley Station and the proposed location (IR 4.24). A further option referred to as the 'western infield route' or 'Route E' with a bridleway located further west than Route D was also considered but discounted as it would require significant and ongoing engineering and drainage works (IR 4.30) and consensus at the Inquiry was that Route D would be more favourable. A northern bridleway route was considered inappropriate by NR due to its length and the engineering challenges of achieving a full width bridleway due to the steep embankment slope. It would also require a separate bridge or subway for rail users adding to the costs (IR 5.48).
30. The Secretary of State notes that there is no distinguishable difference in cost and difficulty of constructing Route D and the NB (IR 4.28) and that whilst Route D had been NR's preferred option the NB was pursued in the belief that it would be the most deliverable option. The Secretary of State agrees with the Inspector's conclusions that, at the time, there was justification for all of the main alternative options under consideration to be discounted (IR 5.49).
31. Further to the matters addressed in paragraphs 19-21 above with regard to the need on safety grounds to close TLC, the Secretary of State notes the safety case detailed at IR 4.32 – IR 4.40. She notes that prior to informal closure the level crossing was the only way of moving between platforms resulting in a significant number of daily pedestrian crossings and that passengers must be able to move between platforms without obstruction (IR 4.33). The factors detailed at IR 4.36 which exacerbate the risks at TLC are noted and the conclusion of the Impact Assessment Report is also noted that closure of the level crossing is the only suitable course of action (IR 4.35). In line with paragraph 21 above and in agreement with the Inspector's conclusions at IR 5.50 and IR 6.1 the Secretary of State is satisfied that the safety case for extinguishing the bridleway at TLC has been demonstrated and that there is a clear and compelling case for its closure.

***Suitability of the proposed bridleway for all users, including any safety implications of use with horses***

32. In accordance with section 5(6) of the Act an Order under section 1 or 3 of the Act 'shall not extinguish any public right of way over land unless the Secretary of State is satisfied – (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required'. The Secretary of State is in agreement with the Inspector at IR 6.3 that an alternative bridleway is required to replace the existing section of public bridleway across TLC. As detailed in IR 5.54 and in line with Annex 2 to the *DfT Guide to TWA Procedures* the Secretary of State would wish to be satisfied that the alternative provided 'will be a convenient and suitable replacement for existing users'.
33. The Secretary of State notes the reasons for which NR considers the NB to be suitable and convenient as detailed at IR 4.46 and that estimated journey times would be

broadly comparative for all users (IR 4.48). The Secretary of State agrees with the Inspector at IR 6.4 that, since the existing bridleway appears to be mainly used for recreational purposes, the longer route is not likely to be inconvenient for pedestrians, cyclists or equestrians using the bridleway for leisure purposes.

34. The Secretary of State notes, however, the safety concerns raised about use of the NB with horses given that it runs in close proximity to the railway line along which frequent services including high speed trains and freight trains pass. It is clear that there is significant public concern over this matter which is, as the Inspector reports, by far the most contentious issue upon which most objectors focussed and a matter to which a significant amount of Inquiry time was dedicated to allow objections to be aired and responded to (IR 5.51 and IR 5.52).
35. The Inspector details the cases made by the objectors at IR 2.1 – IR 2.91. The safety concerns are primarily that the proximity of the NB to the railway line risks horses using the NB being frightened by the trains which will be running at head height. This could result in injuries to the horses themselves, the riders and to others using the NB, including pedestrians, cyclists, children and dogs.
36. Mr Lane, NR's expert witness in equestrian matters, submitted that the expectation is that only experienced equestrians will ride adjacent to the railway and ride only with a degree of familiarisation, judged with regard to the individual horse (IR 4.55). The Inspector noted the evidence of Mr Lane that the NB would be suitable provided the rider was experienced and riding a horse suitably familiarised with trains. The Inspector observed that this is stretching the meaning of suitability if it only suits those within a limited category (an experienced rider with a horse suitably familiarised with trains) and that it is also not convenient if the limitations constrain use by those for whom the bridleway should be intended (IR 5.55). Noting that prior to the temporary closure of TLC a broad range of equestrians could use the short stretch of bridleway at TLC (IR 5.56 – IR 5.57 and IR 5.66), the Secretary of State agrees that such limitations would constitute an alternative that is convenient and suitable only for some and not for all existing users (IR 5.55 and IR 6.5).
37. The safety concerns raised by Dr Hales (an Equine Vet called by BHS) (IR 5.68) and the views of Dr Hales, Mr Steel (for BHS) and Mr Lopez regarding the fencing (IR 5.68 – IR 5.71) are also noted by the Secretary of State, as are the concerns of Sue Eeley (for BHS) that the NB will not provide access to a circular riding route for all users, being suitable only for familiarised horses. Whilst asserting that the proposed NB would provide an equivalent circular route to the existing bridleway, Mr Lane accepted that this would only be the case for horses familiarised with moving trains (IR 5.75).
38. The Secretary of State notes NR's view that BHS' concerns are inconsistent with their published advice and guidance on bridleways near railways. However, Mr Steel (for BHS) accepts that it is not inherently unsafe to ride within earshot of trains but considers noise to be particularly relevant to safety as one element among a combination of other factors. The Secretary of State agrees with the Inspector that, whilst there are bridleways near railway lines, the BHS advice is general in nature and will clearly depend on each situation (IR 5.72).
39. As far as alternative options are concerned, the Secretary of State acknowledges Mr Lane's oral evidence that only a horse familiarised with trains should be ridden along



either the NB, Route D or Route E due to the 60m stretch adjacent to the railway as it could not be guaranteed that a train would not be encountered in the 60m stretch. He argued, therefore, that the horse should be safely able to encounter a train at any point on the bridleway (IR 5.60 and IR 5.78). Mr Lane considers that all three routes would be unsuitable for an inexperienced rider on an unfamiliarised horse (IR 5.65) but acknowledged that an inexperienced rider on an unfamiliarised horse could with appropriate assistance, use the TLC (IR 2.76 and IR 6.5). Sue Eeley (for BHS) and Mrs Machin (OBJ/25), both of whom promoted Route D, were not, however, in agreement with Mr Lane's evidence regarding the 60m stretch in that they consider it possible to avoid passing trains on the 60m stretch by turning back should an approaching train be heard (IR 5.77). Likewise, the equestrians granted licence by Tackley Estates already use the 60m stretch to access the licensed route and those who gave evidence are content to do so but are not content to use the remainder of the NB (IR 5.81). Mr Lane acknowledged that the risk of encountering a train was greater if riding the full length of the NB (IR 5.77). Dr Hales (for BHS) acknowledged that the 60m stretch would be safe for the majority of horses and riders and Miss Langstone (an Equine Behaviourist called by BHS) considered that a judgement could be made along the 60m stretch, which would not be possible along the remaining length of the NB (IR 5.79).

40. Having considered the concerns raised, the Secretary of State agrees with the Inspector's views that, given the length of time taken to ride the full length of the NB, the risk of encountering a train would be higher along the NB than along the 60m stretch shared by the NB and Route D (IR 5.80). The Secretary of State has noted the evidence regarding analogous bridleways and that Mr Steel (for BHS) in considering the examples on NR's list acknowledged that 8 could on the face of it be considered analogous but, as stated by the Inspector, it does not automatically follow that the NB must be suitable (IR 5.84). The Secretary of State agrees with the Inspector that the presence of other bridleways located alongside railway lines is of little assistance and without more information on the example bridleways and their usage it is not possible to draw any reliable comparisons that the NB offers a safe alternative in this case (IR 5.87). The existence of other circular routes in the locality was regarded by the Inspector as an unnecessary distraction from the point in issue (IR 5.89). While the availability of other routes may lessen the impact on those equestrians who decide not to use the NB it is not relevant to the consideration as to whether the proposed alternative is suitable and convenient. The fact remains that section 5(6)(a) of the Act prohibits the extinguishment of a public right of way unless an alternative has been or will be provided and NR has not sought to argue that section 5(6)(b) applies and that no alternative is required (IR 5.90).
41. Suggestions were made by Mr Carr (BHS) of enjoyment being a factor in the determination of convenience and suitability (IR 5.91 – IR 5.93). NR argues that suitability and convenience should be treated as materially distinguishable from enjoyment, pointing rather to factors such as bridleway surface, width and adequacy of coincidence with pedestrians or cyclists, the fluidity of the ride without being temporarily held up by impediment and appreciation of scenic amenity as considerations for suitability and convenience (IR 4.42). The Secretary of State is in agreement with the Inspector's analysis that 'suitability' concerns the ability of a route to be used for its intended purpose and 'convenience' would ordinarily concern the ease of use whilst 'enjoyment' relates to a person's experience of a route (IR 5.91). The Inspector set out that it is not to say that enjoyment is irrelevant; it can be an

'additional factor' or 'other consideration' (IR 5.94). Mr Lane agreed that Routes D and E were preferable to the NB for equestrians in terms of the experience and being away from the railway line where it is more of a countryside environment (IR 5.95).

42. The Secretary of State acknowledges the views of Cycling UK (OBJ/65) regarding the convenience of the proposed permissive use of the footbridge and lifts by cyclists (IR 5.99) and TPC's (OBJ/63) views at IR 5.101 who consider the NB to be unsuitable for other users due to the risk of encountering a frightened horse. As far as surfacing of the bridleway is concerned, the Secretary of State notes that NR is prepared to discuss alternative surfacing provided that it is viable and appropriate for all three user groups (IR 5.98). The Secretary of State is satisfied that the NB would be suitable, convenient and safe for both pedestrians and cyclists (IR 5.102). She is, however, in agreement with the Inspector's conclusions that the NB would not be safe for horses not familiarised with trains and/or inexperienced riders and notes that the Inspector pointed out that this view was shared by those with equestrian expertise on behalf of both the objectors and NR (IR 5.102 and IR 6.5). The Secretary of State, therefore, concludes that the NB is not a suitable and convenient alternative for all users. Furthermore, the Secretary of State is inclined to agree with the Inspector's conclusions that Route D would reduce overall risk given the significantly shorter stretch located alongside the railway line (IR 5.103).

***Likely impact of the Scheme on the use of agricultural vehicles by local landowners and accessibility for all users***

43. The original alignment of the NB at its south-western end would cut through a field and lead to land severance of an area of agricultural land (Plot 10). As a result, Mr Peake, the landowner, was concerned about access with large machinery to the field boundary hedge for maintenance purposes once the NB is fenced. As the Inspector sets out it also raises the question of whether more land than necessary would be affected due to this alignment (IR 5.104). The alignment has now been revised so that the NB follows the hedge line closer to the field edge boundary (shown in the APP07-2 - Updated Land and Rights of Way Plans 28 June 2024) to address this matter. Mr Morse, on behalf of Mr Peake, confirmed that this should allow sufficient space for maintenance of the field boundary hedge. The Inspector reports that NR believes there to be adequate space to gate the NB at its southern exit point without affecting the existing field gate and its use by agricultural vehicles and machinery. Mr Morse indicated that he was as satisfied as he could be but wished to see the points of access correctly illustrated on the plans (IR 5.105). The Secretary of State is, therefore, satisfied that the concerns regarding the effect of the Scheme on the use of agricultural vehicles have been addressed and, is in agreement with the Inspector's conclusions at IR 5.113, and is content that there is no reason to believe that there will be any adverse impact.
44. NR stresses that the step-free access for pedestrians, cyclists, persons with reduced mobility and other vulnerable or encumbered users which would be provided by the footbridge would improve both accessibility and journey times and experience for users (IR. 4.65). The Inspector points out (IR 5.107 – IR 5.108) that in terms of accessibility NR has concentrated on the benefits of the footbridge and the Scheme also should be considered and that accessibility of the NB should, therefore, rightly be taken into account in determining whether or not the Public Sector Equality Duty would be discharged. The Secretary of State agrees with the Inspector's conclusions

that the NB would be accessible to all users in terms of width and surfacing (IR 5.108) and notes the Inspector's comments with regard to the gates that would be necessary at either end of the NB for land management purposes to contain livestock. The Inspector noted that where new structures are proposed the least restrictive option in terms of accessibility should be sought. British Standard BS5709:2018 requires gates on public paths to meet the needs of the land manager and to cause as little restriction as possible for all lawful users (IR. 5.109 – IR 5.112). The Secretary of State acknowledges the need for a balance between the requirements of landowners and improvements in access for users with disabilities and agrees that in this case gates will be required for the containment of livestock. The Inspector concludes (IR 5.114) that a modification should be made to the draft Order to record in the Definitive Map and Statement the provision of gates as a limitation that are compliant with British Standard 5709:2018. The Secretary of State agrees with this proposed modification.

***Impact of potential withdrawal of permissive footpath access over the proposed footbridge and whether the footbridge would impact upon neighbouring land***

45. Permissive access through Tackley Station over the footbridge is to be provided by NR for pedestrians and dismounted cyclists who are not using the railway. NR argues that rights of way cannot be dedicated over operational railway assets (IR 4.67) and that it will only withdraw permission if necessary for operational reasons (IR 4.69). Nevertheless, permission could be revoked at any time. NR is resistant to any formalisation of use (IR 5.115) and Mr Lopez acknowledged that no weight should be given to the provision of the permissive path in relation to the legal tests in section 5(6) of the Act or the other matters to be reported on (IR 5.117). The Inspector concludes that no weight can be given to the provision of permissive access when it is wholly discretionary and even the extent of the permission is unclear as it is not recorded in any way (IR 5.119). The Inspector noted that if permissive access were to be withdrawn the impact would be low as no reliance can be placed on its provision in deciding the merits of the Scheme. As a result, the Order creates a cul-de-sac bridleway to the east of the station from the outset (IR 5.128).
46. The Secretary of State acknowledges Mr Peake's concerns over users of the existing bridleway trespassing on his land upon reaching the cul-de-sac termination point but agrees with the Inspector that this risk could be mitigated through the provision of suitable signage (IR 5.121). The Secretary of State acknowledges the informal nature of the permissive access over the footbridge and that given access is not to be considered in the context of section 5(6) of the Act agrees with the Inspector that any withdrawal of the access could, therefore, only be of minimal impact.
47. By the opening of the Inquiry the privacy concerns of Mr Ridout (OBJ/01) in relation to use of the footbridge had been resolved through the grant of prior approval formalising its location and the inclusion of screening (IR 5.122). Mr Ridout's concerns over lighting of the footbridge remained outstanding but he accepted that sensitive low-level lighting should address those concerns. The Inspector noted that measures to limit any light spill and glare were submitted with the prior approval application (IR 5.123) and that the Lighting Impact Assessment has satisfied the Local Planning Authority that light spill would not significantly result from the Scheme (IR 5.126). The Secretary of State, like the Inspector, is satisfied that potential impacts of the footbridge on neighbouring land have been addressed (IR 5.129).

## ***Compulsory Purchase***

48. As previously noted, the original draft Order submitted to the Secretary of State provided for the permanent acquisition of the freehold interest in land for provision of the NB. Following consultation with Oxfordshire County Council, NR established that acquisition of the freehold interest in the land was not necessary and that it need only acquire rights for the creation of the NB. NR, therefore, submitted an amended draft Order and the draft Order now before the Secretary of State contains no powers of permanent land acquisition (IR 1.32 and IR 5.130). Temporary possession will, however, be required for temporary access, construction of the NB, worksite access, construction compounds, site offices, accommodation facilities, delivery of materials and laydown and storage (IR 5.136).
49. As the Order would authorise the compulsory acquisition of rights over land and the temporary acquisition of land (IR 1.6), the Secretary of State must be content that the relevant tests as set out in the Ministry of Housing, Communities and Local Government's *'Guidance on the Compulsory Purchase Process'* are satisfied:
- 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 the Human Rights Act 1998);
  - c. whether there are likely to be any impediments to NR exercising the powers contained within the Order, including the availability of funding; and
  - d. whether all the land and rights over land which NR has applied for is necessary to implement the Scheme.
50. Given the need for the Scheme, the Secretary of State agrees with the Inspector that there is a compelling case in the public interest to justify conferring on NR powers for the proposed temporary use and acquisition of permanent rights in the Order land for the purposes of the Scheme and all land and rights over land which NR has applied for is necessary to implement the Scheme (IR 5.147).
51. Having regard to the Human Rights Act 1998, the Secretary of State is also in agreement with the Inspector that the purposes of the Scheme are sufficient to justify interfering with the human rights of those with an interest in the land affected by the compulsory acquisition of rights (IR 5.147). NR is not aware of any potential impacts of the Scheme on rights to private and family life, home and correspondence protected under Article 8 of the European Convention on Human Rights (IR 4.108).
52. The Secretary of State notes that NR has received prior approval from West Oxfordshire District Council for the construction of the new footbridge and that it can be constructed under permitted development rights, that funding is in place and that there are no identified impediments to the implementation of the Scheme (IR 1.27-1.30, IR 4.109 and IR 5.147). The Secretary of State is satisfied that there are no likely impediments to NR exercising the powers contained within the Order.

53. Provision of a new bridleway is required under section 5(6) of the Act (IR 5.141). Whilst the Inspector reports that Mr Peake would prefer that the land be subject to compulsory acquisition so that he is divested of all responsibility, the Secretary of State agrees with the Inspector at IR 5.145 that this would not be a proportionate response since acquisition of the freehold interest to dedicate the NB as a public right of way would not be necessary. The Secretary of State is satisfied that all of the land subject of temporary possession is required to enable construction of the footbridge and NB. Given the reduction in the scope of the Order by the removal of permanent acquisition of freehold interest, she is content that NR has a clear requirement and justification for use of the land and that all of the land and rights over land applied for are necessary for the implementation of the Scheme and provision of the NB (IR 5.147).
54. The Secretary of State notes that the 2024 version of '*Guidance on the Compulsory Purchase Process*' refers at paragraph 12.3 to reasonable efforts being made to negotiate the purchase of land by agreement which will include the acquisition of temporary rights over land by agreement. The Secretary of State further notes that negotiation of the purchase of land by agreement is a long-standing practice expected to be adopted by applicants with compulsory acquisition being a last resort and that the Inspector references the efforts made by NR in its negotiations.

#### ***Other matters***

55. The Inspector reports that no other matters of significance were identified by NR (IR 5.148). Concerns over the maintenance costs of the fencing for the NB were raised on behalf of Mr Peake. It is anticipated that future maintenance costs will be factored into the compensation payment (IR 5.149). Mr Peake also had concerns over 'occupiers' liability' arising from NR no longer seeking to acquire the freehold interest in the land for the NB (IR 5.150). As concluded above, this is, however, the proportionate response. Concerns regarding private vehicular rights were raised by Mr Carr (BHS). These are addressed in article 6(8) of the latest draft Order (IR 5.151 - IR 5.152).

#### **Secretary of State's overall views on the Inspector's conclusion**

56. The Inspector concluded that there is a compelling case on safety grounds to close TLC and extinguish the bridleway thereover and that the Secretary of State can be satisfied of all matters within the Statement of Matters except for Matter 3 regarding the safety implications of use of the NB with horses (IR 6.1). For the reasons given in this letter, the Secretary of State agrees with the Inspector's conclusions.
57. In accordance with section 5(6)(a) of the Act an Order shall not extinguish any public right of way over land unless the Secretary of State is satisfied either that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required. An alternative bridleway is required to replace the existing section of bridleway which crosses TLC. In accordance with Annex 2 of the *Guide to TWA Procedures* the Secretary of State must be satisfied that the alternative right of way will be a convenient and suitable replacement for existing users (IR 6.2).

58. The Secretary of State is in agreement with the Inspector's conclusions at IR 6.5 that, since the NB would only be safe for use by experienced riders on horses familiarised with trains, any other equestrian user would be excluded from its use. The Secretary of State cannot, therefore, be satisfied that the NB is a convenient and suitable replacement for all existing users of the section of bridleway over TLC and this test is, therefore, not met. On this basis the Secretary of State is currently minded not to approve the application.
59. The Secretary of State notes the Inspector's conclusions at IR 6.6 - IR 6.15 regarding the alternative Route D and is in agreement with the Inspector's comments at IR 6.6 that whilst Route D also uses the 60m stretch beside the railway and is, therefore, not entirely risk free for all equestrians neither was the existing bridleway over TLC. BHS is satisfied that this short section is acceptable for equestrian use and the remainder of Route D would be removed from the proximity of the railway line, thereby reducing safety risks. Route D is also supported by the local equestrian community as well as Mr Peake. The Secretary of State agrees with the Inspector that Route D would be both suitable and convenient as well as more enjoyable than the NB (IR 6.12).
60. The Secretary of State notes that Route D was previously favoured by NR (IR 4.26) but subsequently discounted as an option due to the demands made by Mr Peake (IR 5.41) and that NR do not now consider Route D to be deliverable (IR 4.101). The Secretary of State notes that Mr Peake no longer has concerns about Route D splitting his agricultural fields and also notes the Inspector's comments at IR 6.8 regarding the natural division created by the tree line along the route of Route D. The Secretary of State agrees with the Inspector that Mr Peake's demands for the extinguishment of the whole of the existing bridleway on his land should NR revoke permissive access across the footbridge and the carrying out of works to the Old Whitehill underpass do not directly relate to the Scheme and agrees that an Order for Route D could be made and would be deliverable (IR 6.7 and IR 7.2).

### **Secretary of State's consideration of the Post Inquiry Consultation**

61. In its letters dated 13 January and 5 March 2025 responding to the Secretary of State's consultation, NR has, however, requested that Route D should no longer be considered as an alternative to the Scheme proposed. The Secretary of State notes the content of the letters and the procedural and practical issues outlined by NR with respect to Route D. The Secretary of State is, however, satisfied that there is nothing in the correspondence which causes her to disagree with the Inspector's conclusions and, having considered the information provided by NR, her views in relation to Route D remain unaltered.

### **Next Steps**

62. NR is invited to respond within 3 months of the date of this letter (**by 21 August 2025**) to [transportinfrastructure@dft.gov.uk](mailto:transportinfrastructure@dft.gov.uk) with any further views following consideration of this letter and the Inspector's Report on incorporating Route D into the Scheme. Should Route D come under consideration could NR please confirm whether the adoption of Route D will significantly change the environmental assessment such that an EIA becomes needed. NR's views are also sought with regard to the ongoing temporary closure of TLC which is authorised by a Temporary Traffic Regulation Order made under the Road Traffic Regulation Act 1984 and which expires in June

2025. If it is not possible for NR to respond within that time, NR should explain its reasons for this.

63. NR's response will not be published but will be shared as considered necessary and comments invited from other interested and affected parties. The Secretary of State will consider NR's response and any related comments from other interested and affected parties in reaching a final decision.

#### **Distribution**

64. Copies of this letter are being sent to those who appeared at the Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11(3) of the Act but who did not appear.

Yours sincerely

Kayla Marks