



Report to the Secretary of State for Transport

by K R Saward Solicitor MIPROW

an Inspector appointed by the Secretary of State for Transport

Date: 31 October 2024

TRANSPORT AND WORKS ACT 1992

APPLICATION BY NETWORK RAIL INFRASTRUCTURE LIMITED FOR CONFIRMATION OF THE NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER 202[]

Inquiry opened on 18 June 2024 and closed on 3 July 2024
Inspections were carried out on 17 June 2024 and 21 June 2024,
File Ref: TWA/23/APP/05

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List of Abbreviations used in this Report

BBT	Byways and Bridleways Trust
BHS	The British Horse Society
BS5709	The British Standard for Gaps, Gates and Stiles
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DMS	Definitive Map and Statement
EB	Existing bridleway number 379/2/10
FB	Footbridge
IA	Independent assessment

IAR	Impact Assessment Report
m	metres
NB	New bridleway (as proposed)
NR	Network Rail Infrastructure Limited
OCC	Oxfordshire County Council
OCP	Oxfordshire Connect Programme
ORR	Office of Rail and Road
PIM	Pre-Inquiry Meeting
POE	Proof of Evidence
the Pony Club	Bicester and Warden Hill Pony Club
Route D	Alternative in-field route for the new bridleway
Route E	Alternative western in-field route for the new bridleway
Route F	Proposed alignment for the new bridleway (NB)
Scheme	the proposed Tackley Level Crossing Order
SoC	Statement of case
SoM	Statement of Matters
SoS	The Secretary of State for Transport
SPS	Station passenger crossing
TLC	Tackley Level Crossing
TPC	Tackley Parish Council
TTRO	Temporary Traffic Regulation Order
TWA	Transport and Works Act 1992
TWAO	Transport and Works Act Order
2004 Rules	Transport and Works (Inquiries Procedure) Rules 2004
60m stretch	the section of public footpath to be upgraded to a bridleway

CASE DETAILS

THE NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER 202[]

- The Order would be made under sections 1 and 5 of the Transport and Works Act 1992.
- The application for the Order is dated 9 November 2023. The form of Order was subsequently amended as detailed in this report.
- The application, supporting documents and Inquiry documents are available at the following website: [Inquiry documents - Gateley \(gateleyhamer-pi.com\)](https://gateleyhamer-pi.com)
- The Order would confer powers on Network Rail Infrastructure Limited to close Tackley level crossing and for the creation of a new highway and temporary use of land in connection with the level crossing closure, the provision of a footbridge with lifts at Tackley railway station, and the construction of a bridleway and temporary construction compounds. The Order would also authorise a footpath redesignation and other rights in land.
- There were 79 objections outstanding when the Order was submitted to the Secretary of State for Transport for confirmation.

Summary of Recommendations: That the Order is not made as submitted and revised but is proposed for modification and consulted upon as set out in the recommendations at paragraph 7 below.

1. INTRODUCTION

Background

- 1.1 Network Rail Infrastructure Limited ('NR') is a public sector arm's length body that owns and manages most of the national rail infrastructure network in Great Britain. It is subject to independent regulation by the Office of Rail and Road ('ORR').
- 1.2 This case concerns a proposal by NR to permanently close the level crossing ('TLC') located around 35m south of Tackley railway station in Oxfordshire. The village of Tackley lies entirely on the western side of the railway. The railway is double track with passenger platforms on each side of the railway line. As part of the Scheme, the existing public bridleway (numbered 379/2/10) ('EB') would be extinguished (in part) where it crosses the railway line.
- 1.3 In replacement for non-rail users, part of an existing public footpath (numbered 379/16/20) located to the west of the railway line would be upgraded to a bridleway and a new public bridleway created beside the railway line. The upgraded section of footpath is approximately 60m in length ('the 60m stretch'). The trackside section of the proposed new bridleway ('NB') is approximately 860m long. It would connect with the lane to the south, which is un-named on the deposited plans but described by some residents as Whitehill Lane or Old Whitehill Lane. The lane carries public rights of way as a bridleway at the proposed exit/entry point. As it extends west (and proceeds through the railway underpass), the lane becomes a restricted byway.
- 1.4 All the aforementioned features are shown coloured and annotated on the plan appended to NR's Statement of Aims (APP03-1, page 7). It should be noted that the southern end of the NB was amended during the Inquiry to a position along

the outer edge of the field, as shown (by pink line) on page 6 of APP07-2.

- 1.5 In some objections, the NB is called 'Route F' or the 'lineside route'. The alignment preferred by some objectors is called 'Route D' or the 'infield route'. The approximate position of Route D is marked by a red line on the aerial image at Appendix E hereof, copied from NR-W2-2, page 9.
- 1.6 Pedestrian public access between the two railway platforms would be achieved via a new footbridge ('FB') with lifts for which planning permission has already been obtained. The Order seeks the compulsory acquisition of rights in land and temporary use of land in connection with the construction of the FB and provision of the NB. There would also be temporary stopping-up of rights of way to allow for necessary works to be undertaken and temporary possession and/or use of land during construction.
- 1.7 Whilst not within the draft Order, NR states that it intends to allow public pedestrian access (including the wheeling of bicycles) through Tackley railway station via the new FB to connect with the EB to the east of the station. This would be on a permissive basis only. It is discussed more fully below.
- 1.8 TLC has been unavailable to the public since 28 April 2020 when NR obtained a Temporary Traffic Regulation Order ('TTRO') under the Road Traffic Regulation Act 1984 for its temporary closure. The TTRO is valid until June 2025.

Procedural Matters

- 1.9 There were 79 objections submitted to the Department for Transport ('DfT') in response to the draft Order. Some of those 79 were made by more than one individual or on behalf of groups. There were 2 supporters and 1 neutral representation. By the close of the Inquiry on 3 July 2024, none of the objections had been formally withdrawn. Over the course of the Inquiry some grounds of objection were confirmed as overcome for two of the affected landowners (Mr Peake and Mr Ridout), as referenced below, although they both had other concerns remaining unresolved.
- 1.10 Statements of case ('SoC') were received from NR, Hywel Morse on behalf of Andrew Peake, Alexandra Machin, Bicester and Warden Hill Pony Club ('the Pony Club'), Malcolm Ridout, The British Horse Society ('BHS'), Byways and Bridleways Trust ('BBT') and Tackley Parish Council ('TPC').
- 1.11 A Pre-Inquiry Meeting ('PIM') was held remotely on 21 May 2024. The purpose of the PIM was to discuss procedural matters to assist in the efficient and expeditious conduct of the Inquiry. No discussion took place on the merits of the case either for or against the Order. A note recording matters discussed at the PIM was subsequently published on the Inquiry website.
- 1.12 Following the PIM, complaint was made by the BBT and TPC. TPC stated that it was at a serious disadvantage and the outcome of the Inquiry would be grossly unfair as it had not been able to fund a Barrister. TPC had thought the Inquiry would be approximately 1 day long. It considered an Inquiry duration of up to 3 weeks to be excessive and impeded full representation by TPC whose councillors are all volunteers. TPC stated that it had been unable to discuss

matters due to the pre-election period and communication from the Inquiry was sadly lacking over dates on which it would be required.

- 1.13 As made clear at the start of the PIM (which representatives of TPC attended), one of its main purposes was to identify those who wished to speak at the Inquiry so a timetable could be drawn up. A draft timetable was published in advance of the Inquiry taking into account the availability of witnesses. It was also made clear that the Inspector wished to hear from unrepresented parties. It was suggested that it would be beneficial to appoint a nominated spokesperson where people wished to make the same point.
- 1.14 Given the breadth of matters to be examined, this was never going to be a 1-day Inquiry. Indeed, by sitting on multiple days, it increased the scope for participation. Throughout the Inquiry, the running order was adjusted to accommodate the availability of witnesses. Representatives of TPC were present on most days and took the opportunity to put their questions to NR witnesses. The Inquiry ran for 8 days over a 3-week period.
- 1.15 As it was, the position of the TPC appeared to largely correspond with other objectors, including BHS, who was professionally represented. Closing submissions were heard remotely on 3 July 2024 with opportunity for members of the public to observe. Written closings were invited from parties unable to attend on the allocated day, including TPC.
- 1.16 BBT complained that its position had been compromised by the short timescale and the inflated volume of material produced by NR, which had proved impossible to process within the constraints of its resources and commitments, and by the failure to run the Inquiry virtually. Whilst noting these comments, the deadline for proofs of evidence ('POE') was known well in advance. There was no prejudice in any event with BBT having taken the decision to bring its case within the umbrella of that being run by BHS. The possibility of a virtual element was not ruled out and it was made clear that such options were being explored. No concerns were raised in advance and no requests made for an extension of time for POEs.
- 1.17 My first site visit was unaccompanied. An accompanied site visit took place on 21 June 2024 in the presence of representatives of NR, TPC, Hywel Morse (for Andrew Peake) and Sue Eeley (on behalf of Alexandra Machin).

The Inquiry

- 1.18 The Inquiry was conducted under the Transport and Works (Inquiries Procedure) Rules 2004 ('the 2004 Rules').
- 1.19 Andrew Peake is an affected landowner of the neighbouring Tackley Estate who submitted a SoC in objection to the proposals. His land agent, Hywel Morse, attended the Inquiry and expressed a wish to make an opening statement only, which was accommodated. Mr Morse agreed to answer NR's questions, insofar as he could, on his client's position should Mr Peake not attend. On that basis, Mr Morse was also afforded an opportunity to cross-examine NR's witnesses when he was present. Mr Peake did not attend the Inquiry.
- 1.20 Given its charitable status, BHS' professional representative (Mr Carr) did not appear throughout the entire Inquiry in order to limit its costs. Mr Carr attended

the whole of week 1 when the case for NR was heard, except for one witness (Jerry Greenwood) whose evidence ran into week 2. Mr Carr was present when Mr Greenwood gave evidence on NR's reasons for proposing to replace the existing section of bridleway with a permissive route through the railway station rather than a public right of way. The remainder of Mr Greenwood's evidence focussed on national policy and strategy upon which Mr Carr indicated he had no questions of the witness.

- 1.21 Councillor Sue Lygo attended the Inquiry for TPC along with former parish councillor June Collier, who confirmed that she had been formally appointed by TPC to speak on its behalf. Both took the opportunity to speak and to put questions to NR's witnesses.
- 1.22 Alexandra Machin appeared for both herself, and the Pony Club. As Mrs Machin was not available for the whole of each sitting day, the sequence of evidence was re-ordered to accommodate her as far as practicable. On the occasions when it was not practicable, the Inspector agreed that Mr Carr (representing BHS) could read out and put Mrs Machin's questions to NR's witnesses. Mr Lopez, Counsel for NR, raised no objection to this approach.
- 1.23 Sue Eeley appeared as a witness for BHS. Prior to giving oral evidence Mrs Eeley updated her written POE by adding comments in red text in response to the equestrian evidence already heard from Charlie Lane, who was called by NR as an expert witness. NR took issue with this updated POE on procedural grounds arguing that it constituted a rebuttal proof produced outside the timescale set at the PIM.
- 1.24 Where a person is to give evidence by reading out a POE, the timescale for submission of the POE is 4 weeks prior to commencement of the Inquiry (rule 16 of the 2004 Rules). There is no provision within the 2004 Rules for rebuttal proofs although they are commonly filed in larger Inquiries within a timescale set by the appointed Inspector.
- 1.25 Clearly, Mrs Eeley's updated POE was late. However, a witness can elaborate upon their written work in oral evidence, subject of course to issues of fairness in relation to any new points raised. In effect, the updated POE provided NR with advance notice of evidence to be tendered giving ample time to consider, take instructions, and address it in cross-examination. To address any perceived unfairness, and with the agreement of BHS, I agreed to accept a written note in response from Charlie Lane (INQ20) with opportunity for BHS to reply only to any new points arising. The resultant written note from BHS (INQ23) provided fairly short observations more appropriately reserved until closings.
- 1.26 Some outstanding procedural matters and all closing submissions were heard remotely on 3 July 2024. As no-one for TPC could attend, I accepted its written closing statement that was also published on the Inquiry website for all to view.

Other statutory permissions and consents

- 1.27 NR was required by rule 10(2)(f) of the 2006 Rules to supply a list of all consents, permissions or licences required under other enactments for the purposes sought in the application. At the time of the application, only the TTRO had been obtained from Oxfordshire County Council ('OCC') for the temporary closure of TLC.

- 1.28 Subsequently on 9 April 2024, West Oxfordshire District Council gave prior approval, as local planning authority, under the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 18, Class A for the construction of the new FB. Accordingly, the construction of the FB itself can be built out under permitted development rights. The planning merits pertaining thereto do not fall for consideration in the Order applied for.
- 1.29 The updated list of consents (APP08-1 and 2) identifies that additional temporary rights to stop up highways and to stop up/divert other public rights of way may be required depending upon the detailed design and construction programme. If so, application would be made to OCC under the Road Traffic Regulation Act 1984 following appointment of a contractor, should the Order be made.
- 1.30 Subject to grant of the Order, application would be made to OCC for noise consent in relation to construction sites under section 61 of the Control of Pollution Act 1974. Similarly, if any utilities require diversion, then application to the relevant utility company would be made under section 85 of the New Roads and Street Works Act 1991 after grant of the Order.

Statement of Matters

- 1.31 On 24 April 2024 a Statement of Matters ('SoM') was issued by DfT pursuant to rule 7(6) of the 2004 Rules. The SoM was replaced with a revised version issued on 7 May 2024. The revised SoM sets out the matters about which the Secretary of State ('SoS') particularly wishes to be informed about in consideration of the application, as follows:-
- 1) The aims and objectives of, and the need for, the proposed Tackley Level Crossing Order ('the Scheme'), including its effects on railway operations and confirmation all statutory procedural requirements have been complied with, including the adequacy of the consultation conducted.
 - 2) The main alternative options considered by NR and the reasons for choosing the preferred option set out in the Order including the consideration of the safety case for extinguishing the bridleway at the level crossing.
 - 3) The suitability of the proposed NB for all users, including any safety implications of use with horses.
 - 4) The impact of the Scheme as a whole on: (a) the use of agricultural vehicles by local landowners, and (b) the accessibility for all users.
 - 5) The impact of potential withdrawal of the permissive footpath access over the proposed stepped Footbridge (i.e. the FB) and whether the FB would impact upon neighbouring land.
 - 6) Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the Department of Levelling Up Housing and Communities 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 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 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.
 - d. Whether all the land and rights over land which NR has applied for is necessary to implement the Scheme.
- 7) Any other matters which may be raised at the Inquiry which may be important and relevant to the SoS's decision.

The Draft Order

- 1.32 As originally submitted to the DfT, the draft Order (APP01) provided for the permanent acquisition of land for delivery of the NB. Following consultation with OCC, as the authority responsible for maintaining the Definitive Map and Statement ('DMS'), NR realised that it need only acquire rights in the land to create the new public bridleway. It did not need to acquire the freehold interest in the affected land to do so. The day before the Inquiry opened (i.e. on 17 June 2024) NR submitted a revised draft Order (APP01-1 and APP01-2) without any powers of permanent acquisition of land.
- 1.33 The single neutral representation received was made by OCC, whose comments concerned the drafting of the Order. OCC Officers contributed to the 'modifications session' at the Inquiry where the provisions of the draft Order and possible amendments were discussed. Sarah Aldous for OCC confirmed that concerns over the drafting were addressed by:
- (i) Correction of 'Public footpath' to 'Public bridleway' in Schedule 2, column (2).
 - (ii) Correction of point B1 on the revised land and rights of way plan (APP07-1) to accurately show existing public footpath 379/16/20.
 - (iii) Addition of a width (4.5 metres) for the NB within Schedule 3, column (4).
- 1.34 As an informative, OCC pointed out that it would maintain the NB once it becomes maintainable at public expense to bridleway standard only. It would not repair any surface damage caused by vehicular use, whether caused by NR or otherwise.
- 1.35 As a result of the modifications session at the Inquiry, further amendments to the draft Order were incorporated (APP01-3 and APP01-4). In particular, all references to cycle tracks can be removed after the OCC Officer and NR's Solicitor confirmed that no cycle tracks are affected by the proposals. The explanatory note (APP01-3, page 22) has also been updated to reflect that there would no longer be any permanent acquisition of land. Whilst not essential,

provision is made to recognise the existence of private vehicular rights over the NB enjoyed by owners of adjacent garages. This is added for clarity (at article 6(8) of the draft Order).

- 1.36 The revised land and rights of way plan (APP07-1) was further updated (see APP07-2) during the Inquiry on 28 June 2024 to address Mr Peake's concern over the alignment of the southern section of the NB.
- 1.37 There was no suggestion that the proposed FB requires mention in the Order, and it would be unwarranted given that the FB already benefits from the necessary planning permission. The point of contention flagged by BHS and other objectors was whether, and if so how, the intended grant of permissive rights through the railway station should be recorded if at all. I return to this below.
- 1.38 The final versions of these core documents are the clean copy draft Order (APP01-4) and the land and rights of way plan (APP07-2). Whilst consultation has not been carried out on these changes, they are of very limited scope. I am satisfied that no prejudice is likely to arise by the SoS reaching a decision on whether or not to make the Order on the basis of these changes.

The Report

- 1.39 This Report proceeds to summarise the main thrust of the cases made by the objectors and NR, as applicant, in respect of the proposed Order before setting out my conclusions and recommendations to the SoS. Due regard has been had to the aims expressed in section 149(1) of the Equality Act 2010 in arriving at my conclusions.
- 1.40 In considering the objections it is convenient to refer to the marked-up plan identifying alternative options referenced in the documents. The plan at Appendix D hereto is taken from the SoC of BHS (SOC-OBJ-60, page 19).

2. THE CASES MADE BY OBJECTORS TO THE ORDER

Objections the subject of Inquiry appearances

Andrew Peake (OBJ 70)

- 2.1 Mr Peake is identified in the Book of Reference (APP06) as the registered freeholder of the following plots of land forming part of the Tackley Estate: 001, 003, 003A, 003B, 006, 007, 008, 009, 010 and 012.
- 2.2 The revised draft Order (APP01-2) would allow NR to acquire rights over plots 006, 008 and 010 belonging to Mr Peake to permanently form a highway for the purposes of creating a bridleway. Prior to the Inquiry opening the intention of NR was to acquire the freehold of land within these plots. The following plots would be used temporarily: 001, 003, 003A, 003B, 007, 009 and 012. The extent of acquisition rights and use is now shown on INQ-04-1 and INQ-04-2.
- 2.3 By the end of the Inquiry, the position of Mr Peake was as summarised below.

- 2.4 Mr Peake's grounds of objection are focused on (i) the location of the NB; (ii) the effects on the Tackley underpass; (iii) the future of the remaining cul-de-sac bridleway; (iv) the proposed Heads of Terms, and (v) the drafting of the Order.

Ground 1: Location of the proposed bridleway

- 2.5 The latest revised plans showing the alignment of the NB are core document APP-07.02. They had not been seen by Mr Peake prior to closing submissions. Oral updates were given by Mr Morse during closings to address the revisions.
- 2.6 Mr Peake is concerned about the safety implications of the NB running close to the railway, not least the prospect of horses being frightened by fast-moving trains running at head height and consequently injuring themselves, their riders, and others using the bridleway. Mr Peake notes from the Statement of Aims (APP03) that the first aim of the closure is to improve safety (paragraph 4.1). However, the Consultation Report (APP05-1) merely describes the NB as "not ... inherently unsafe" (paragraph 8.6.7), which is a surprising form of words given the first aim of the closure.
- 2.7 These safety concerns are shared widely locally, are reasonable, and are a material consideration in determining the application. Mr Peake understands that other objectors have provided further expert evidence on this point.
- 2.8 Mr Peake currently grants licenses for a small number of friends and colleagues to cross Tackley Estate at an alternative location ('the licensed path'), which has been shared with NR. The licenses were granted because of NR's temporary closure of TLC in April 2020.
- 2.9 Owing to the safety concerns with the NB, Mr Peake considers there is a risk that an accident on the NB may place a greater responsibility under occupiers' liability compared with the original proposal to acquire the freehold of the land needed to construct the NB and the field side fence set out in the draft Order (APP01-0). Underlining is for emphasis only:

"Creation and maintenance of new highway

9. —(1) The new highway specified in column (4) of Schedule 3 (closure and replacement of level crossing) is to be completed to the reasonable satisfaction of the highway authority and the new highway, including any boundary structures, drainage or other structures laid under it, is to be maintained by and at the expense of NR for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority, save that any boundary structures will be maintained by and at the expense of the relevant adjoining landowner [sic]."

- 2.10 Mr Peake considers it inappropriate to create a new highway using the powers of the Transport and Works Act 1992 ('TWA') to the operational benefit of NR, while placing a further burden of responsibility and liability on the landowner. To date, Mr Peake is the only landowner to have assisted the users of the public rights of way to have a safe alternative route. It is requested that if the NB is granted, NR be required to acquire the freehold of the land needed to construct the bridleway, erect the field side boundary fence to a satisfactory stock proof specification and to maintain this fence as they currently undertake with their

lineside fence. Mr Peake feels this is more appropriate given the concerns raised over the risk of the route and the diversion coming about by need of the applicant. It is felt that NR's decision to alter its plans to acquire the land is one driven by liability and future maintenance, not one of costs of the acquisition of the land in question.

- 2.11 NR has sought to address concerns (in INQ-18) raised on Mr Peake's behalf during the site visit on 21 June 2024. Mr Peake comments on the points below.
- 2.11.1 Point 7a of INQ-18 – NR's decision not to acquire the land for the NB is not seen as a benefit to Mr Peake as suggested. Rather, it is seen as imposing an ongoing liability of a bridleway which has safety concerns and a maintenance liability for approximately 900m of fencing. This could be overcome by NR acquiring the land as originally proposed, which is a more cost-effective solution for the public purse based on the terms currently on offer by NR.
- 2.11.2 Point 7d of INQ-18 – While noting NR's gesture of improved access to assist the landowner with future maintenance of the boundary hedge, Mr Peake has concerns over conflict with OCC's position in terms of damage arising to the bridleway surface by vehicular traffic. Hedge cutting occurs at a wet time of year between 1 September and 28 February when the ground is easily damaged by vehicles. However, after considering the revised plans realigning the southern end of the NB to the outer edge on plot 010 (APP-07.02), Mr Morse confirmed satisfaction as far as he can that this matter is now addressed. Distances would need to be measured in a survey and more detailed plans produced.

Ground 2: Effects on the Old Whitehill (Tackley) underpass

- 2.12 The Old Whitehill railway bridge, reference 011 on plan INQ-04-01 spans the underpass which runs under the bridge. This will be used as the only road access for NR's works relating to the station FB construction plot 001 on plan INQ-04-02 (not the bridleway compound).
- 2.13 The underpass bridge is low for modern vehicles (agricultural and delivery lorries) plated at 3.6m. Mr Peake understands that NR has not investigated the feasibility of increasing the clearance of this delivery pinch point, or what (if any) cost benefits increasing the clearance may have in the cost of delivering the necessary equipment for the construction of the new station FB when compared with the proposal to deliver goods by rail.
- 2.14 Mr Peake is content for the underpass track to be used by NR for these purposes. However, the opportunity must be taken to ensure the underpass can be used in future by farm machinery and that improvements are made to prevent the ponding of rainwater under the underpass, making it unpassable for walkers and bridleway users. NR states in its Response that it *"would like to thank your client for your agreement to share use of the route during the construction period and for access to the proposed northern compound"*. For the avoidance of doubt, Mr Peake's agreement is subject to satisfactory terms being agreed.
- 2.15 To ensure the bridge is left with enough height clearance for farm machinery to travel underneath, Mr Peake requests the underpass track is lowered to an appropriate depth and standard, to be agreed with Mr Peake. New drainage should be installed to ensure that the area does not hold water, making it

unpassable for walkers and bridleway users. The outfall of such drainage can be provided by Mr Peake within his ownership to the south of the underpass.

- 2.16 NR had previously stated that it is “*engaging with the Statutory Undertaker who own the apparatus under the bridge to determine what may be able to be done at this location*”. At the Inquiry it became clear that no such contact has been made with Thames Water. As a result, Mr Peake commissioned his own asset search via Thames Water and shared the results with NR. These confirm the sewer is a 180mm outside diameter pipe. It is understood to run from Tackley in the north, alongside the railway (evidenced by two above ground manholes viewed on the site visit), before turning 90 degrees when it meets the bridleway, under the underpass and into the sewage works, as illustrated at paragraph 23 of INQ-30.

Ground 3: The future of the remaining cul-de-sac

- 2.17 There seems little tangible means of reassurance that the permissive path through the station will be documented and formalised, it appears to only be at NR's discretion.
- 2.18 If NR decides that access to non-railway users should cease, Mr Peake is concerned by the prospect of the presence on Tackley Estate land of a redundant cul-de-sac. In these circumstances, Mr Peake does not consider it reasonable for the cul-de-sac to remain open to the public when a new replacement will have been provided. An amendment is sought so that, if the Order is made, the status of the resultant cul-de-sac bridleway would change to that of a permissive path on similar terms to those proposed by NR through the station, with the addition of its use by bridleway users. Additionally, an undertaking is sought from NR that closure of its permitted path would trigger closure of the cul-de-sac as a permitted path also. Scant justification is provided for NR's refusal to amend the draft Order to close the EB in its entirety and make access to it permissive. This is disappointing because it would be preferable to put in place a mechanism now to address Mr Peake's concerns.

Ground 4: Heads of Terms

- 2.19 Progress of the Heads of Terms has been unreasonably slow with a period of 2 weeks (06/06/24 to 21/06/24) during the run up to the Inquiry where Mr Peake failed to receive a response from NR's agent. In addition, it is now evident that the change in the Order detailed in the fifth ground of objection had been noted before the Inquiry, in the Heads of Terms issued by NR's agent. However, these changes were not highlighted as a change, or noted in conversations or correspondence.

Ground 5: Drafting of the Order

- 2.20 In Part 1, clause 9-1 of the draft Order (APP01-2), NR now seeks to create the NB by means of acquisition of rights, rather than the acquisition of the freehold of the land, in addition to passing the future maintenance of the bridleway fence to the landowner, Mr Peake. The Inquiry has been told that this late change in the Order is a result of interaction between NR and OCC, as the local highway authority. There are no details of this correspondence, or the questions asked of OCC. From discussions, Mr Peake understands that OCC has no intention of owning any interest in land, only the creation of the public right of way over the

surface. Therefore, it has never been the case that OCC required the ownership of the land. The change by NR seems to point towards a desire to distance itself from the liability of a bridleway which has outstanding safety concerns and to negate the future maintenance responsibility which it seeks to pass to Mr Peake.

- 2.21 Following production of the 'Tackley Estate Field Gateway' document (INQ-26) during the Inquiry, Mr Peake simply seeks a measured survey and illustration to show that the existing north and south agricultural accesses (at parcel point 012 and B2 on APP07-2) will not be narrowed. Mr Peake also seeks confirmation as to who will be responsible for maintenance of the bridleway gates.
- 2.22 The written closing submission from Mr Peake, suggests that a costs application was to be made. No such application was made at the Inquiry. It was made clear by the Inspector at the outset that any costs application should be made before the Inquiry closed.

Mr Peake's conclusions

- 2.23 Mr Peake supports and agrees to his land being used for the creation of a bridleway. This could be either along the alignment of an existing path available to those licensed in its use along the alternative alignment of Route D or further west along the route identified as Route E. However, Mr Peake's consent is conditional upon several factors. One condition is that the section of the EB affecting his land be extinguished and replaced with a permissive path, so that it no longer carries public rights of way. Mr Morse clarified at the Inquiry that the intention would be that permissive use of the bridleway would remain so long as the public are permitted to traverse through Tackley railway station.
- 2.24 Mr Peake's concern is that if permissive use through the railway station is terminated, the public will trespass on other land belonging to Tackley Estate rather than re-tracing their steps along the EB that had become a cul-de-sac.
- 2.25 A permissive route could be terminated at any time at the whim of NR. Unless otherwise agreed, maintenance responsibility for the permissive path would remain with NR with no guarantee of its availability or condition. If permission for public use was revoked, then it would leave a cul-de-sac bridleway on the opposite side of the railway line and no means of bridleway connection.

The British Horse Society (OBJ 60)

- 2.26 BHS is a registered charity that seeks to protect and promote the interests of all horses and those who care about them, including the 3.5 million people in the UK who ride or drive a horse-drawn carriage. In a more localised context, there are in the region of 1,350 horses registered in the immediate area of the Scheme, which equates to over £9.25 million per annum being spent into the local economy.
- 2.27 BHS is not, in principle, against closure of TLC. However, it can only reasonably be expected to support the proposal if a suitable and convenient alternative route is to be provided for riders. BHS does not consider that this requirement has been met. It does not advance any case in terms of other types of users, i.e. pedestrians and cyclists.

- 2.28 BHS' objection focuses on the creation of a new bridleway (and associated fencing) to the west of the EB (i.e. Route D) and SoM 3.
- 2.29 BHS is not opposed to the principle of the creation of a new bridleway to the west of the railway. It does however believe that the route referred to as 'Route D' is the suitable and convenient alternative route.
- 2.30 In terms of the statutory framework, it is important to focus on the requirements of section 5(6) of the TWA which provides:
- "5. Subject-matter of orders under sections 1 and 3*
- ...*
- (6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied –*
- (a) that an alternative right of way has been or will be provided ..."*
- 2.31 Annex 2 of the *Guide to TWA Procedures* (published by DfT, June 2006) goes on to advise that "alternative right of way" in section 5(6) TWA means "a convenient and suitable replacement for existing users". Nowhere in the legislation or the guidance is there an "adequacy" test, or the requirement suggested in NR's opening comments that the alternative route must be merely "adequate".
- 2.32 The terms "suitable" and "convenient" are not defined within the TWA, nor are they given any special meaning, and therefore should be attributed their normal meaning for the purposes of any assessment in the current process. The Concise Oxford English Dictionary defines:
- "Suitable" as: "right or appropriate for a particular person, purpose, or situation":
- "Convenient" as: "fitting in well with a person's needs, activities and plans involving little trouble or effort".
- 2.33 It has been accepted, or certainly went unchallenged by NR, that use of the bridleway network in the area is for recreational purposes. There is no suggestion it is for utilitarian purposes. By definition, use of the bridleway network is in the exercise of an "enjoyable leisure activity". It follows that if the NB is to be a "suitable and convenient" alternative route, and be fit for purpose, it must be fit for use for recreational purposes. Therefore, the enjoyment of the route becomes, in this specific case, a material consideration as part of the tests.
- 2.34 It is therefore submitted that the "enjoyment" of the proposed alternative route is a material consideration in terms of both suitability and convenience. In real terms, an alternative route is only a genuine alternative if users of the existing way are likely to use it. If they are deterred from doing so, e.g. as a result of risks (perceived or otherwise) or the environment through which they are expected to walk or ride, they are unlikely to use the route and it is therefore no real alternative. And as such, it cannot be said to be "suitable".
- 2.35 It is clear from the *Guide to TWA Procedures* that the views of "existing users" cannot be lightly disregarded. No matter how many "experts" are brought forward to express opinions on matters within their own areas of expertise, no

matter how well thought out and assessed in writing, they are unable to provide truly representative views and opinions based upon decades of local knowledge and riding in this specific area. That is the theatre of expertise of the local riders.

- 2.36 A substantial number of those riders submitted written objections. Several appeared at the Inquiry and gave evidence. Their low level of numbers at the Inquiry should not, and must not, be taken out of context. In preparing its case BHS both nationally and locally was minded to comply with the Inspector's request to avoid wasting time with duplicating evidence. BHS' local witnesses gave their time, and in some cases considerable loss of income, to attend the Inquiry. It is indicative of the strength of feeling in this matter. BHS could have called 10, 20 or 30 local witnesses to express their view, but it would not have moved the matter on further. On the contrary, it is notable that no local people have come forward or been called in support of NR's case to express any contrary view.
- 2.37 BHS says it is clear from the evidence of local people, the existing and actual users of the bridleways in this area, that they would not wish to use the NB. They gave details and, in some instances graphic evidence as to why they consider the lineside route to be unsuitable and inherently unsafe. BHS submits that the only reasonable and sustainable conclusion to be reached is that the NB is not fit for purpose because it is not a suitable or convenient alternative route.
- 2.38 It is clear, especially from the evidence of Andy Willson (Project Delivery Engineering Manager for NR), that Route D was a preferred option, and a fully costed scheme had been prepared. He also accepted that the barrier to that option (i.e. the requirements of Tackley Estate) appear to have fallen away.

BHS comments on Mr Lane's evidence

- 2.39 Mr Lane's evidence, called as NR's equestrian expert, was undoubtedly balanced and reasonable based upon his extensive experience. Mr Lane also considered that Route D "*would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line*".
- 2.40 Perhaps of greater importance, Mr Lane was very careful to clarify that the NB would only be safe and suitable for appropriately familiarised horses and/or experienced riders (as opposed to all bridleway users). Despite this, the Inquiry heard from local existing riders with decades of experience of riding in the area that they would not use the route. The experience of those riders was also considerable. Both they and Mr Lane expressed informed opinion based upon their not insubstantial experience.
- 2.41 Without directing criticism at Mr Lane, his opinion was commissioned by NR after it had already decided upon the NB. NR was essentially seeking an opinion to defend a decision already made, rather than an impartial decision on what might have been the most suitable and convenient route. Mr Lane was placed at a disadvantage from the outset. This must have some bearing on the weighting and value of Mr Lane's evidence, albeit a situation not of his own making.

BHS case for Route D

- 2.42 BHS contends that the case in favour of opting for Route D over the proposed

NB is compelling not least because it has, to all intent and purposes, “unilateral” support and/or agreement. That cannot be said for the NB. Route D is:

- supported by BHS and local riders,
- a route supported by the owners of the land crossed by it (albeit conditionally with conditions that are acceptable to BHS),
- a route which would be more cost effective,
- a route which by the admission of NR’s own expert Mr Lane, “*would be a preferable route to the New Bridleway as it will be more pleasant to ride at this greater distance from the rail line*”.
- a route which was previously the preferred option of NR as accepted by Mr Willson of NR who also confirmed that a fully costed scheme for this route had already been drawn up.

2.43 NR is faced with defending the indefensible lineside route despite even its own experts agreeing that Route D is more suitable and convenient. So much so that it was actually the preferred choice until relatively recently.

BHS comments on the Tackley Estate conditions

2.44 Route D comes with some conditions of the landowner, Mr Peake of Tackley Estate. BHS recognises the considerable lengths taken by Tackley Estate to agree a solution. BHS agrees that the extinguishment of the EB is not unreasonable if Route D is to be provided as the alternative. This is especially the case as BHS understands that Tackley Estate has confirmed that the EB would still be made available on a permissive basis for as long as NR maintains a permissive route over its proposed FB. There will therefore be no loss of amenity for those wishing to continue to use the existing route.

BHS comments on other matters arising in evidence

2.45 Whilst it may be a theoretic option, in reality the EB will receive little or no equestrian use once severed by closure of TLC. Riders prefer circular routes that avoid retracing one’s steps wherever possible.

2.46 The EB forms part of the only circular route in the locality which avoids national speed limit (60 mph) roads. This circuit will to all intents and purpose be lost if the NB is adopted. Clear and unchallenged evidence has been heard on the point. The actual and existing users have stated unequivocally that they will not use the NB due to very genuine safety concerns. They know their area, they know their horses and they know their local riders. Nothing that NR or Mr Lane says can change those very facts.

2.47 BHS maintains that a stone surfacing over the full width of the NB, wherever it runs is completely unnecessary. The EB consists of a stoned surface and grass verge. Any new route should be partially surfaced but with a grass margin retained to provide a preferred surface option for equestrians. BHS understands this matter is still open to discussion and would welcome such a dialogue.

- 2.48 BHS accepts there may be a need for fencing if it is a requirement of the adjoining landowners but maintain that it is not necessary for the purposes of the bridleway itself. Boundary markers would suffice.
- 2.49 As an additional point taken orally in delivery of the closing submission, it is the preference of BHS that if fencing for stock control is required then the need for gates at either end of the NB should be recorded in the Order and that the gates will be compliant with the British Standard.
- 2.50 The Analogous Bridleways Report (NR-SOC, page 78) does not say who produced it, their qualifications to do so, who instructed the author, and what the author's instructions were. It is not signed, dated, paginated or paragraph numbered. Furthermore, the author was not available to answer questions or to be cross examined. It does not compare like for like. It considers existing and possibly historic bridleways, not newly created or proposed bridleways. It does not specify levels of use, surface materials, the recorded widths or the frequency and type of trains using the adjoining lines. The Report does not identify the proximity to population centres or whether they form part of the only circular route that avoids national speed limit (60mph) roads in the area. The Inquiry even heard in evidence (not countered or proven to be incorrect), that one route cited does not actually exist. It cannot be given any credibility and should be disregarded from any informed decision-making process. It does nothing to inform or assist.
- 2.51 In relation to SoM 5, BHS submits that there should be some formal mechanism to compel NR to provide the permissive path in the first place otherwise there is a question over its relevance in considering the Scheme. BHS does, of course welcome the permissive access, but wishes to ensure that NR is actually compelled to provide it, given NR's concerns over statutory compatibility, and for that matter the commercial compatibility of such a permissive route.
- 2.52 It was confirmed that issues flagged by BHS over potential road traffic offences from exercise of private vehicular rights over the 60m stretch are now addressed by the proposed modifications agreed by NR.
- 2.53 Attention is drawn to section 13(4) of the TWA as the mechanism for the SoS to propose modifications to the Order to incorporate Route D instead of the NB. It is pointed out that only Tackley Estate and Ede Holdings Limited/Ede Developments (Oxford) Limited have an interest in hereditaments 004 and 005 in the book of reference (APP06, pages 25 and 27), both of whom were party to the current process. There may be different adjoining property owners who should be consulted.
- 2.54 BHS concludes that either the Scheme should be amended to substitute Route D, or the Order refused in totality to allow a new Order to be made incorporating Route D.

Tackley Parish Council (OBJ 63)

- 2.55 The closing submission for TPC (INQ-25) was submitted by Councillor Lygo in writing only. The word 'DRAFT' appears at the top. As no other version was received, it is taken to be the final version.

- 2.56 TPC emphasises that the 7 elected members are volunteers, most of whom work, hence their limited attendance at the Inquiry.
- 2.57 TPC remains of the opinion that the NB is unsafe for horse riders, cyclists, walkers, and dogs. Whatever decision is made, Tackley community must live with it forever. As communication with NR has been erratic in the past, the general feeling was that the proposed Scheme was a forgone conclusion from the most recent consultation. At that time, it appeared that other options had not been considered and had been summarily dismissed.
- 2.58 Whilst it is clear from NR's evidence that an optioneering exercise was carried out on the various options discussed with the community, this was not shared before the Inquiry was announced. So far as TPC is aware, no quantified cost benefit analysis or relative/comparative risk analysis has been carried out (e.g. 'Barwood bridge', warning lights etc.).
- 2.59 TPC's favoured option remains 'Barwood bridge' as the chosen solution. Moving the station slightly further north would:
- a. Remove the need for train passengers to park on Nethercote Road, sometimes for days at a time, as a car park can be included;
 - b. Satisfy the people in Nethercote Road who back on to the railway (Tackley Residents Railway Action Group) as there will be no bridge at the bottom of their gardens;
 - c. It will be safer for horse riders, cyclists, walkers, and dogs.
- 2.60 The alternative route favoured by some (Route D) is marginally safer, but there is still the 60m stretch alongside the railway, which in fact, is much closer to the line. TPC suggests that access via Lime Kiln Road would make this safer.
- 2.61 June Collier, a former TPC Councillor until 2022, read out a script. It was stated to be made on behalf of TPC although it was acknowledged that no-one from the TPC had approved or seen the text, which included personal experiences and concerns. As a resident, Mrs Collier was welcome to express her views to the Inquiry and her comments are taken to be made on that basis.
- 2.62 Mrs Collier suggested that one option, other than a subway, that the village would have been happy with, was a bridge to the north of the station, informally known as 'Barwood bridge'. This option would have solved all the problems. It would have facilitated disabled access, pedestrians, bikes, and horses. Even NR vehicles could use the bridge to get to the station instead of parking in Nethercote Road late into the night disturbing the residents.
- 2.63 Under cross-examination, it emerged that Mrs Collier mistakenly believed that the Scheme involved closure of the EB to the east of the railway line and not just the section crossing the line over TLC. Mrs Collier confirmed that was also her understanding of the TPC's belief and also "some" cyclists.
- 2.64 Mrs Collier agreed when it was put to her by Mr Lopez that local people might be cheered if they realised that the EB would remain open, provided it did not become a permissive path.

- 2.65 Mrs Collier referred to the 'Tackley Wheelers', a group of about 36 cyclists, as being "not keen" on the FB.

Alexandra Machin (OBJ 25) on behalf of both herself, and Bicester and Warden Hill Branch of The Pony Club (OBJ 52)

- 2.66 Mrs Machin focuses on SoM 2 and 3.
- 2.67 It is submitted that a bridleway should be an enjoyable route for all. Above all, it must be safe. The previous route with the level crossing was enjoyable. It was also safe for riders, their horses, and others. The current proposal carries a clear and substantial risk of needlessly making the route unsafe. It would also be less enjoyable, but safety is the major consideration.
- 2.68 TLC was safe to use by all equestrians (and others) providing they adhered to the rules in place. The vast majority always did so. It is understood there have been rare situations where riders have not done this (although Mrs Machin is not one of those). In principle, Mrs Machin does not object to the closure of the crossing providing a safe alternative is provided.
- 2.69 However, Mrs Machin still strongly objects to the NB as it is just not safe. It is not suggested there would be accidents every time the NB was used, but it is very much her case that there would be occasional accidents with the dangers being far greater than NR has acknowledged. The NB would replace a safe path with a risky one.
- 2.70 NR has failed to adequately consider the alternative options. Both Mr Willson and Mr Lane (for NR) stated during the Inquiry that Route D is better than the NB. It was in fact the preferred route originally. This route is currently used on a licenced basis by local riders. It is the preferred option among the riding community.
- 2.71 Route D is inherently safer due to the distance from the railway line (a similar distance to the EB). The 60m stretch is a narrow path close to the rail tracks, but by stopping, looking and listening there is ample time to move along this corridor without meeting a train. There is also room at either end to move away from the track if a train comes, or if another user is in the corridor, such as a pedestrian.
- 2.72 None of the listed bridleways presented by NR as analogous bridleways (page 78 of NR's SoC), which are next to railways show a great deal of data or analysis to ascertain their similarity to the NB. They just show speed of the train and length recorded. Critical factors omitted are: (i) frequency of trains, hence probability of meeting one (ii) height of the train to the horse (for example, in a cutting or on embankment), (iii) vegetation and cover between train and horse. The failure to carry out a proper analysis and have regard to these factors undermines the proposal and NR's approach to Route D.
- 2.73 The Inquiry heard of incidents involving ridden and led horses caused by trains that cannot be ignored or brushed aside.
- 2.74 The NB is not suitable for all users. The videos shown during the Inquiry were for familiarised horses, and as Miss J Langstone explained, due to their vision they could not see the train.

- 2.75 NR's equestrian expert, Mr Lane, has consistently and frequently asserted that the NB is only suitable for 'familiarised' horses. This, by definition, excludes a significant percentage. Evidence has been heard about why and how 'familiarisation' is difficult to achieve. In a sense, the reasons do not matter; it is a fact. Non-familiarised horses would use the NB and the dangers would be real.
- 2.76 In INQ-20 Mr Lane states: "*I accept that a horse which is unfamiliar with trains passing, ridden by an inexperienced rider could use the level crossing if given appropriate assistance. The same rider and horse combination cannot use the new bridleway.*" This passage is emphasised because of its importance.
- 2.77 The NB would significantly increase the risk of an incident with a horse than the EB. This is entirely unacceptable when there are viable alternatives. What should be sought is the least detrimental alternative. It is submitted that Route D, as suggested by Andrew Peake in his SoC, should be considered as a satisfactory alternative.
- 2.78 In support of this, particular attention is drawn to the statements from Dr Jo Hales and Miss J Langstone who provided expert evidence on the reasons why NR's proposed NB is not safe.
- 2.79 Route D would give equestrians a circular bridleway route involving limited road use along 20mph speed restricted roads and is further away from the railway line than the NB. It has many merits: (1) It is an excellent way of moving one of the most vulnerable road users, riders, off busier roads. This is obviously good especially as roads are becoming busier for the other traffic too. (2) It is a great training area for inexperienced, novice and young horses and for riders to build confidence and trust. (3) Being circular also can be a training aid for horses in building trust and confidence as you are not turning back on yourself.
- 2.80 The suggested alternative circular routes presented by NR are not equivalent for many reasons. Moreover, it must be borne in mind that the old circular bridleway was a safe and enjoyable route that all levels of ability and age of horse and rider could negotiate. The NB does not provide that, nor do any of the suggested alternative circular routes given by NR.
- 2.81 The length of the NB is important as risk is calculated by probability multiplied by severity. Therefore, the length of lineside is important when considering the 60m to 860m. 60m is 14.33 times shorter. Added to that, you can 'stop look and listen (beware of trains)' as the signs at the crossing say - then negotiate at walk the 60m in less than 30 seconds. Generally, trains can be heard in most circumstances when 30-60 seconds away. Even at trot it is not possible to negotiate the 860m [corrected from 960m by Mrs Machin in oral delivery] of proposed trackside length in less than 4 minutes. You certainly cannot 'stop look and listen' for a train for that time. The risk and danger would be much greater.
- 2.82 The fact that equestrians, the BHS and even NR's expert witness say the NB is unsuitable for all but familiarised horses, and there are better alternatives, is hugely important. It must lead to the proposal being rejected.
- 2.83 It does not matter if the NR legal team present a case to support their objective of closing TLC because there is now surely enough evidence to demonstrate that an alternative route (which is an option) would be safer and preferred.

- 2.84 During the Inquiry Mr Lane said that in the Household Cavalry incident in April 2024 the horses had been ‘spooked’ by a sudden, unexpected noise. He said the noise of a train, which builds up, would cause no problem to a familiarised horse. Mrs Eeley suggested horses could feed off each other’s anxieties and create a chain reaction of panic. Mr Lane countered (INQ20) that a single frightened horse would be expected to normally be calmed by the presence of one or more other calm horses.
- 2.85 In conclusion, whilst accepting there are reasons why NR would like to close TLC, its proposal is seriously flawed. It would not provide an acceptable alternative for the bridleway. Further, if TLC is to be closed, Route D would be the appropriate substitute, not least on grounds of safety.

Malcolm Ridout (OBJ-01)

- 2.86 A SoC was filed by Malcolm Ridout as a local resident living close to Tackley station. Mr Ridout attended the Inquiry to clarify his evidence and answer questions put by the Inspector and Counsel for NR.
- 2.87 At the time of his SoC, Mr Ridout raised 4 grounds of objection. Two grounds concerned the siting of the FB and potential for overlooking to his home and the risk of light pollution. Planning permission for the FB has now been obtained bringing clarity to the position. Earlier in the Inquiry, NR had called Lisa Bullock, Town Planner, to provide details of the prior approval obtained under the planning process. Ms Bullock confirmed that the plans submitted to the local planning authority included the provision of screening to the western end of the FB and to the steps to prevent overlooking of neighbouring residential homes.
- 2.88 Mr Ridout confirmed that the siting of the FB is now a “non-issue” for his property. His concerns over lighting would also be addressed provided it would be low level and as least intrusive as possible.
- 2.89 Mr Ridout did not withdraw his comment that a tunnel, as proposed in the past, is the much-preferred option that should be re-investigated. He also remains concerned that the footpath over the FB would be permissive allowing permission to be withdrawn by NR “on a whim”. Paragraph 3.1(d) of the Statement of Aims (APP03-0) states: *"Permissive access can be provided to non-railway users, including pedestrians and cyclists on foot, along the platforms and over the footbridge unless and until ticket barriers are installed at the station, or Network Rail otherwise determines access to non-railway users should cease."* Mr Ridout considers that this clause should be amended to ensure there is oversight on the path, and that NR would need to provide a compelling reason to the regulator to remove permission.
- 2.90 In oral evidence, Mr Ridout submitted that temporary closure of permissive access for ‘operational reasons’ (as cited by NR) could encompass a multitude of facts. Having a permissive path would enable NR to shut the access for reasons that are opaque and non-essential.

Other written objections from those who did not appear at the Inquiry

- 2.91 The following main issues are raised in respect of the Scheme. Many objectors raise the same or similar points. They are recorded only once (unless there is a variant on the same point) to avoid unnecessary repetition.
- The proposal by NR for a subway to accommodate both horses and pedestrians with the necessary finances available was accepted by NR in 2019. A similar proposal for a subway had planning permission in 2001.
 - NR “fobbed off” residents of Tackley and the wider community with empty promises. Lack of engagement in the consultation process with local residents who are experienced riders.
 - It is unacceptable for NR to rely on an online survey of the safety of bridleways next to railways and not a full independent safety survey and actual site visit.
 - The proposal to run a bridleway adjacent to a railway line with trains running at speeds potentially in excess of 90mph is reckless. High risk of a horse bolting and injuring itself, its rider and killing pedestrians using the proposed bridleway.
 - A horse which is scared will bolt and run blind. If trapped in a fenced corridor, as proposed, it could lead to serious injury for the rider, pedestrians, bikes, buggies and other bridleway users.
 - Potential closure of the EB to the east is totally unacceptable.
 - The EB has been used for millennia and is part of a popular circular route from Kirtlington to Tackley. This is an ancient public right of way. Almost certainly the Roman road from Tackley Roman villa to Ackerman Street.
 - Creating a new risk by having the NB too close to the track. Riding alongside the railway is just as risky as crossing it. A scared horse will not stop for anyone.
 - No recollection of the possibility of closure of the bridleway on the other side of the station ever being raised during consultation meetings.
 - No public consultation with OCC ‘public rights of way’ team.
 - Simple solution is a bridge over the railway at the top of Cherwell Drive.
 - Daily use of the bridleway for walks. Would be unhappy if that option is removed.
 - Alternatives have not been fully considered. No consultation of an infield or northern route.
 - The bridleway is part of the national cycle network.
 - Difficult to access the canal/Kirtlington if the path is re-routed.
 - NB will subject people to frequent loud noise, which is not currently the case.
 - EB is well used by walkers, dog walkers and runners. NB is dangerous to all users. Risk from frightened horses affects pedestrians considerably, especially those with dogs.

- As a walker they would feel vulnerable due to concerns the bridleway would be unsafe with nervous horses.
- Hidden in the small print for the permissive path is a note saying the access remains until ticket machines are installed or NR decide to withdraw it. Concerns that access will end once ticket machines are installed.
- Permissive use through the station offers no comfort for walkers who use the circular loop regularly, due to the caveat that access may be withdrawn. Dedication of a right of way over the FB is the proper course.
- The track under the railway bridge is potted, rough and often flooded. It is totally unusable as a permanent access to the NB.
- NR is trying to close access to a beautiful walk and views to save money and not honour previous agreements.
- Noise and speed of trains is terrifying – can choose when to cross the FB, but no escape if walking alongside the track. Own a nervous dog that will probably bolt. If a horse rears or bolts, anyone else on the bridleway will not be able to take evasive action. Children will be greatly vulnerable.
- Concerns about the reliability of the proposed lifts for the elderly, wheelchair users and people with pushchairs.
- Please reconsider building a tunnel.
- The consultation report (APP05-0) lists 5 benefits (2.2.1 to 2.2.5), which is very few given the consequential dangers. Train services stopping at Tackley have only reduced, further isolating this remote village. Only benefits are safety and additional freight trains through the station, which causes greater noise pollution to the area. A positive benefit to the economy but a negative impact on the community.
- The Pony Club has a wide range of rider abilities and levels of competence/awareness of hazards, which also applies to parents and helpers, of the children who are aged 4 years upwards. A new bridleway running alongside trains would not pass a risk assessment and it would not be suitable for Pony Club use.
- Would feel unable to walk the NB with a pram due to the safety risks.
- Consultation does not appear to have considered the feasibility of installing miniature stop lights and/or audible warning devices. (Cycling UK, OBJ-65)
- For cyclists it is estimated to be a 250m diversion with permissive use of the platform FB to return to the point of origin. Consider this excessive. Cycling on railway platforms is prohibited so cyclists would need to dismount and push their bicycle the whole distance, which is significantly less convenient and a deterrent to use.

3. Written representations in support (SUP-01 and SUP-03)

- 3.1 Two representations were made in support of the Order.
- 3.2 Railfuture Ltd (SUP-01) is a not-for-profit company that describes itself as a national voluntary organisation campaigning for improved rail services and promotion of the contribution that rail can make to sustainable transport.
- 3.3 Railfuture Thames Valley Branch supports the replacement of level crossings with bridges and considers this work should be expedited and completed at the earliest opportunity. The elimination of risk is a key benefit. Also, the removal of this, and other crossings at Sandy Lane and Yarnton, will allow additional capacity on the Thames Valley to Midlands rail route.
- 3.4 Additional paths for freight will be essential to relieve capacity on the congested A34/M40 roads and for future de-carbonisation of freight.
- 3.5 Additional passenger services would also be enabled by removal of the three crossings bringing the prospect of more frequent services between Oxford and Birmingham, for instance. Additional train services would result in a modal shift to rail by making it a more attractive option for travelling to Oxford whether for work, study, health, or leisure reasons.
- 3.6 ORR (SUP-03) does not comment on individual schemes, but it does support the closure of level crossings. This should be the first option considered in a risk-control strategy in line with the principle of prevention set out in the Management of Health and Safety at Works Regulations 1999.

4. THE CASE FOR NETWORK RAIL

- 4.1 The closing submissions of NR run to 71 pages. Additional points were added orally by Mr Lopez, which are incorporated within INQ-31-1. This Report does not repeat the whole document, it being unnecessary to do so. Instead, it seeks to capture NR's position on the main points of contention and the SoM.
- 4.2 NR emphasises that the FB itself forms no part of the Order. Although the FB is of practical benefit to all, it is not part of NR's case that the permissive use of the FB by non-station users provides any legal alternative for the right of way to be closed over TLC. This context however denotes no legal significance, for the purposes of the Order, itself. Accordingly, it is submitted that there is no necessity or desirability for the Order to incorporate, anywhere, express reference to the FB. This includes the Explanatory Memorandum. Such inclusion would appear incongruous to the parameters of the Order, as the legal instrument for the Scheme in so far as the Order does not authorise or legislate for the FB. The inclusion of any referencing would risk causing confusion, at a minimum. Whereas silence on the FB can cause no confusion for the Order and could not amount to any omission.

The aims, objectives and need for the Scheme (matter 1)

- 4.3 The fundamental aims, objectives and needs for the Scheme are:
 - (a) the permanent promotion of level crossing safety in respect of TLC;
 - (b) the enhancement of operational efficiency and rail network resilience;

- (c) the facilitation of future capacity improvements for the railway, compatibly with proposed, future strategic delivery, including consistently with NR's Oxfordshire Connect Programme ('OCP');
 - (d) the enhancement of public accessibility, through the introduction of generally improved (and step-free) access, for almost all user groups (i.e. excluding only equestrians) encompassing those less mobile; and
 - (e) Other conspicuous benefits, and net improvements such as environmental benefits.
- 4.4 Regarding (a), NR submits that there is a comprehensively evidenced imperative for this closure to now be formalised, through the Order, on grounds of safety risk. TLC has been expertly assessed as being demonstrably unsafe for users. It is a 'non-compliant' crossing in terms of sighting distance deficiency. Separately, the station passenger crossing ('SPC') form of the TLC – in having provided level access to the station's eastern platform from Tackley village, and between platforms 1 and 2 – has also meant an inviting hazard for station users to cross, irrespective of the train hazard.
- 4.5 TLC discloses a history of 'misuse' coinciding with a fatality event, further to a high catalogue of near-miss incidents at and around these higher speed, and well-trafficked lines. Mr Greenwood, NR's Head of Liability Negotiation described how 'misuse' includes deliberate actions, such as trespass, along with accidental human error. Errors of judgement can occur by not looking for approaching trains before or during crossing, only looking in one direction or once on the crossing deck, pedestrians being distracted e.g., using mobile phones, wearing headphones or whilst focussing on their horse or dog. Mr Greenwood also spoke of the 'hidden train factor' at TLC where a stationary train in the down platform impairs sighting of another oncoming train from the opposite direction.
- 4.6 People dashing to catch a waiting or approaching train and those slowed by luggage, pushing a bicycle, pushchairs etc. were other risks flagged by Anna Holbrook (Industry Programme Director for NR). As there is not a frequent passenger service, she stated that rail users can wait a while if they miss their train. This can increase the temptation to rush if late.
- 4.7 NR submits that the critical necessity is demonstrated to be no less than when temporarily closed in April 2020. The Scheme provides much needed, permanent regularisation of the situation.
- 4.8 As to (b), the permanent closure of TLC would contribute significantly to multiple, significant enhancements in operational efficiency and network resilience terms. Positive impacts include the completion of an integral phase to the future unlocking of increased freight capacity; passenger-experience enhancements and increased financial sustainability through captured cost-efficiencies. More specifically, these would include: (i) a contribution to unlocking additional freight capacity; (ii) increased passenger train capacity; (iii) an increase in line speed; (iv) the creation of uninterrupted train performance through TLC; (v) improved journey times and journey experience; (vi) reduced exposure to financial liabilities; and (vii) net maintenance savings.

- 4.9 In terms of (b) and cost efficiencies, Mrs Holbrook explained that when a train is delayed for more than 3 minutes, fault is allocated to either NR or a Train Operating Company. Where there is misuse or a near miss then fault will be attributed to NR, incurring liability for the full amount of compensation payable to passengers for delayed journeys (referred to as Schedule 8 payments). In such circumstances, liability also arises for commercial payments for delayed freight, which is running 24 hours per day. Reducing liability would achieve savings.
- 4.10 Mrs Holbrook described “huge benefits” to be gained from increasing freight capacity along the line towards meeting challenging Government targets of a 75% increase in freight on the railways by 2050. One freight train could remove 76 lorries from the road network and so there are “huge” environmental benefits.
- 4.11 Turning to (c), the Scheme is designed as a highly significant, strategic component of NR’s broader OCP for the delivery of strategic railway enhancement. This enhancement includes the increase of additional rail freight capacity in keeping with DfT and other stakeholder aspirations. It also accords with overarching rail freight strategy, including under the Oxfordshire Rail Corridor Study [2021] (interchangeably referenced as the OCP) for achieving freight growth along the Oxford corridor, a key freight route from the port of Southampton to the Midlands and the north, and strategic freight corridor, generally. There is prospect of additional non-stopping passenger train capacity ultimately depending upon the subsequent closure of two other level crossings at Sandy Lane and Yarnton Lane but first requires closure of TLC. Without this first stage of enablement, it is certain those benefits cannot be realised.
- 4.12 Other benefits serving the public interest include the new section of proposed bridleway. The permanent promotion of level crossing safety for TLC, would alone properly stand as a justifiable aim, objective and need, for the purposes of Order-making and for meeting the relevant statutory tests.
- 4.13 Consultation and engagement have been open, informative, and complete. It amply demonstrates that, contrary to a small number of unparticularised ‘complaints’ (if complaints at all), NR had engaged more than adequately and consulted on alternatives options as per the POE of Mr Audley (NR-W2-1).
- 4.14 There is no basis to the (unparticularised) assertion of the Pony Club (OBJ-25 and OBJ-52) that there was no attempt to engage with the “riding community”. NR purposely consulted regularly with BHS, because it was identifiable, representative, and resourced amongst equestrians, in addition to the local community, which included some equestrians.
- 4.15 Principal stakeholders include OCC, as the Local Highway Authority with whom discussions bridged the period of 6 August 2018 to 21 March 2024. As APP05.1 demonstrates, regular meetings with Rights of Way Officers have occurred.
- 4.16 On 2 November 2021 it was confirmed to OCC that a subway option was not to be continued. On 9 November 2021 this decision was explained to BHS, with reasons. On 15 November 2021 this was discussed with TPC, and a letter sent to TPC the following day, outlining reasons. The decision to pursue a FB option with use of the NB route was made in Spring 2022. NR notified interested parties soon after on 17 May 2022. The decision to discontinue the subway was made and communicated in November 2021 to Tackley Estate following its confirmed

disinterest in selling the land required to allow for subway construction. It had also become apparent that a land purchase would prove unreasonably costly.

Effects on railway operations – matter 1

- 4.17 The contribution to unlocking additional freight capacity on the Oxford corridor is outlined above. NR maintains that an increase in capacity discloses very considerable strategic importance, not least because this corridor forms part of the Strategic Freight Network. A strategically important aim underlying the OCP is to secure an increase in freight capacity. A rail freight growth target of at least 75% by 2050, to deliver both economic and environmental benefits, is headlined in Government policy.
- 4.18 The OCP has identified necessary interventions for achieving increased freight capacity, including a series of improvements to signalling, stations and the railway itself to increase capacity and journey flexibility. The OCP specifies the need for regularised closure of TLC.
- 4.19 TLC and the two crossings at Sandy Lane and Yarnton, together constrain the frequency of passenger train capacity through this railway station. Permanent closure of TLC would allow an immediate increase to line speed through Tackley station to 95mph for non-stopping trains. This is achievable without necessitating work and does not depend upon down-the-line closures. It would allow faster journey times, and to major conurbations. A further increase, to 100mph, would also be achievable with some minor works.
- 4.20 Upon removal of safety-related incidents, current service performance would be improved, by elimination (save for instances of line trespass) of potential conflict involving train and user. Removal of such conflict would reduce train delays and cancellations. In local and wider network resilience terms also, the avoidance of line incident or accident would inevitably mean strategic, commercial and economic betterment, through the avoidance of adverse performance outcomes, impacting upon operational efficiency.
- 4.21 Reduced delays, increased passenger capacity and increased line speed, would together contribute to betterment in total journey time, and overall journey experience. The potential susceptibility for NR's liability to make compensation payments for delayed or cancelled services would be meaningfully reduced. Extensive network delays can be attributed to level crossing incidents, often causing knock-on delays to train services or their cancellation. The relative durability of the FB would mean comparatively less maintenance responsibility and cost than for the TLC. NR also claim environmental benefits by net carbon dioxide emission savings equivalent to an average new freight train removing around 76 lorries from the road network.

Main alternative options considered and reasons for choosing preferred option – matter 2

- 4.22 Originally, NR hoped to progress with an underpass (also described as a 'subway'). Ultimately, it was unviable because of: (i) significant increased cost; (ii) the considerable disruption to the local community and environment from the engineering/construction operations to incorporate the sloped approaches and for removing large volumes of earth; and (iii) Tackley Estate declining to release the additional land required, with attendant railway disruption. The disruption to field use would have been ongoing for around 7 months.

- 4.23 The underpass was evaluated for a location at the station (without equestrian provisions) and a location further south. This approach developed upon a planning application and appeal under a previous project around 2002. When re-visiting the pedestrian/cyclist/equestrian underpass proposal south of the station, it was considered unjustifiable on cost circa £11million, severe engineering difficulties and considerable rail disruption. The BHS acknowledges the underpass is unfeasible.
- 4.24 A bridge north of the station ('Barwood bridge') was unviable in engineering and cost terms. Due to the distance between the proposed location and Tackley station, two bridges would in fact be needed, significantly increasing costs. Without a second bridge, rail users would need to use Nethercote Road to access one platform and Barwood bridge upon return. The footpath route through the Barwood development was steeper than permitted in mobility terms. The required ramped slope had aesthetic dis-benefits, engineering difficulty and environmental harm. It would be unsuited to disabled access by reason of the length and vertical height of the ramp.
- 4.25 A northern bridleway route was inappropriate due to its length. This alternative bridleway would run around 1.2km north to an existing bridge, then using the EB and road network to create a circular route to the TLC's west gate, totalling approximately 3.2km. A separate bridge or underpass would have been required and prohibitively expensive. There would also have been significant challenges in route clearance and flood risk.
- 4.26 Route D was originally the preferred solution, in conjunction with a footbridge and lifts. This option (as now sought by BHS) was agreeable to most stakeholders and was taken forward to 'Approval in Principle' design (signed off in 2018). However, Tackley Estate withdrew support, and insisted on a conditional package to be met by NR, including the stopping up of the EB in full, which was objectionable for its adverse impacts on the local community. Further, to the south side of the field, the proposed route had been designed close to the fence line (to limit the severing of the main crop area), causing concern to the householder at the south end of the field, who did not wish the route to be tight to their garden fence.
- 4.27 Tackley Estate had also pointed to a greater impact from the 'splitting' of its field, making it considerably more challenging to farm, if not also, to access. The conditional requirements not only included full closure of the EB but also the carrying out of extensive works to the Old Whitehill underpass, both of which were objectionable to NR (as an arms-length public body).
- 4.28 The cost and difficulty of constructing Route D compared with the NB "is materially indistinguishable". Nonetheless, NR considers Route D is unjustifiable, from the perspective of the 'conditional' requirements insisted upon by Tackley Estate. Route D would also increase maintenance obligations on the landowner due to there being two sets of fences, not one, as per the NB.
- 4.29 Further, Mr Lane has since confirmed that the risk of an insufficiently familiarised horse reacting to a passing train along the 60m stretch, will be no less on Route D, than along the NB. Both routes utilise this section, and if a horse might possibly respond unfavourably, a rider should not take the risk of riding along it.

- 4.30 Another option was a bridleway further west than Option D called the 'western infield route' or 'Route E'. This route runs close to a watercourse, and is susceptible to flooding and boggy conditions, that would require significant and ongoing engineering and drainage works. As with Route D, it would increase the maintenance obligations on the landowner due to there being two sets of fences, not one. Route E was (and remains) notably more difficult (than the NB) to justify, in interference with human rights terms, due to greater impact on the landowner arising from splitting the field, albeit less impactful than Route D. The same considerations apply regarding the first 60m of bridleway as per Route D.
- 4.31 NR does not consider that the Scheme discloses any deficiencies such that would need to be overcome or mitigated by an alternative.

Safety case for extinguishing the bridleway at Tackley Level Crossing – matter 2

- 4.32 The TLC had been recorded to fall within the highest 10% of overall risk category of the 545 level crossings for NR's Western Route (from London Paddington to Penzance).
- 4.33 The SPC arrangement at Tackley is unique for the UK, for carrying a public bridleway. Prior to informal closure, the TLC was the sole means of accessing the alternative platform, meaning that any station user/train passenger approaching from the village intending to travel to Oxford, had to cross the live railway (with the same, in reverse). As Mr Greenwood explained in this SPC context, the application of 'Design Standards for Accessible Railway Stations', NR's 'Accessible Travel Policy (Making Rail Accessible)' in conjunction with the 'Disabled People's Protection Policies – A Regulatory Statement', means that unobstructed passenger routing between platforms must be achieved.
- 4.34 Census data recorded is comprehensive. Prior to informal closure, TLC had been the subject of a significant number of pedestrian traverses. Contrarily, the average daily number of equestrian traverses was very low, at merely 1.14.
- 4.35 An Impact Assessment Report ('IAR') (NR-W7-2, page 139) comprehensively assesses safety risk at expert level. It provides an up-to-date appraisal. The IAR uses the latest available dataset, including the census carried out prior to closure, and a train count undertaken in April 2024. The IAR adopts all current best practice and methodologies, including the Gross Disproportionality Factor as part of the Cost Benefit Analysis process and current costs. The IAR scopes all possible mitigation measures again and concludes that closure is the only suitable course of action to mitigate risks to so far as is reasonably practicable. The IAR incorporates findings and conclusions in respect of major sources of unacceptable safety risk.
- 4.36 The risks are exacerbated by a) the high volume of trains; b) extreme variation in train speeds at the point of passing TLC; c) potential for trains to be 'hidden' from the sight of pedestrians traversing and other impediments to the ability of users to see trains (e.g. a stationary train closest to the platform obscuring sightlines); d) other obstructions obscuring sight lines (e.g., high numbers of passengers standing on the platforms, issues with vegetation, weather conditions; and e) poor user behaviour and general user unawareness.
- 4.37 Ian Aston, Route Level Crossing Manager for NR cited cases in oral evidence of

equestrians crossing the railway line without using the station telephone to obtain clearance from the signaller first. There were other incidents of riders not phoning the signaller back once safely across, leaving the signaller unclear if the rail line was clear. The telephone had also been left off the hook. Indeed, over the census period for the IAR, broadly half of the crossings involving horses were found not to have called the signaller (NR-W7-1, para 6.30).

- 4.38 Mr Aston also explained that horse riders are at particular risk when using level crossings due to the unpredictability of animal behaviour (NR-W7-1, para 6.25). Mr Greenwood spoke of how a train could be derailed if it struck a horse with catastrophic consequences.
- 4.39 Safety is at the fore of NR's national operational strategy for level crossings, consistently with its duty of care to promote public user safety and the avoidance of unacceptable hazard. This may be critiqued in the context of users who do, and do not, share protected characteristics under the Equality Act 2010, and whether or not the safety environment of the TLC, vis-à-vis these users, is compatible with NR's discharge of its duties and responsibilities of NR under the Railways Act 1993 (including section 117) and Part 1 of the Health and Safety at Work Act 1974 (sections 1 to 3). For level crossing safety, this encompasses the requirement to reduce level crossing risk, to 'so far as is reasonably practicable'.
- 4.40 Mr Greenwood confirmed there would be critical incompatibility if TLC is not permanently closed. Separately, support for the same imperative is found by reference to NR's operating Licence (e.g. condition 13 (Safety and Standards) of Part D (Standard Industry Obligations) under Part III) which is reflective of section 117 of the 1993 Act.

Suitability of the NB for all users – matter 3

- 4.41 NR considers it noteworthy that there have been no objections based on the suitability or convenience of the NB for pedestrians and cyclists, only some concerns regarding their interaction with horses.
- 4.42 Suitability and convenience should properly be treated as materially distinguishable from 'enjoyment'. Enjoyment is not a prerequisite for finding either suitability or convenience. Overall suitability and convenience for equestrians may encompass multiple factors, including: bridleway surface; width and adequacy of coincidence with pedestrians or cyclists; the fluidity of the ride, without being temporarily held up by impediment, and the rider's appreciation of scenic amenity.
- 4.43 The NB traverse would be brief, and likely form a modest part only of the overall hack. A walking horse would complete the c.900m alongside the railway line section in approximately 12 to 16 minutes. If trotting, this section would be completed in approximately 5 to 6 minutes only. Assuming a train passes every 6 to 7 minutes during peak times, this would not give rise to any high likelihood that all traverses will necessarily experience a train passing during peak times, and certainly not during non-peak times.
- 4.44 Both the surfacing and width of the NB are plainly suitable, allowing for a walking-trotting speed, and safe movement around others.

- 4.45 'Circularity' could only conceivably be 'lost' were the rider to ultimately choose not to use the NB: so, it is the rider, alone, who would determine that outcome.

Objections on 'suitable and convenient'

- 4.46 Suitability incorporates, and must be heavily headlined by safety, but it is wider. In NR's view, the NB would be suitable and convenient for all users because:
- (a) relative to TLC, the NB would provide a significantly better environment for all users. The in-principle acceptability of the NB is agreed in safety terms. Importantly also, BHS' acceptance rightly accounts for an equestrian ride adjacent to a passing train;
 - (b) the POE of Mr Lane (NR-W6-1) also affirms the suitability of the NB for equestrian users. Notably, OCC separately agree this suitability, including, but not limited to, the issue of equestrian safety;
 - (c) the presence of a bridleway adjacent to and in parallel to the operational railway, is acceptable in principle and is not uncommon. In context, up until temporary closure of the TLC, there was close interaction between equestrians and the operational railway. The apparently preferred Route D incorporates a not insignificant section (60m) passing adjacent to the railway;
 - (d) it substantially replicates the journey previously made by users of the TLC, from Tackey village to the east of the railway line (including to Pigeon's Lock). For non-equestrian users also, the NB will provide connectivity with Tackley village, the station and the EB, and onto Kirtlington, etc.;
 - (e) it is of a substantially equivalent distance and corresponding journey time:
 - (i) the EB between points A1 and A2 is approximately 900m; and
 - (ii) the NB between 'point B1 and 'Termination of New Bridleway' (APP7.01) measures approximately 925m, with an additional 375m from 'Termination of the New Bridleway' to point A2, meaning a total distance of around 1.3km.
- There is also no suggestion that the NB is likely to serve many utility trips (as contrasted with leisure or recreational trips). The very modest relative increase in journey time will carry no or negligible significance; and
- (f) there would be no need for the equestrian to use a telephone, negotiate double gates or be concerned for their personal safety.

- 4.47 OCC has not questioned the suitability or convenience of the NB.

- 4.48 The estimated journey times would be broadly comparative for the three categories of user of the NB compared with the EB. The differential is estimated as 6 minutes longer for pedestrian use, 2 minutes longer for on-road cycling time, and 1 minute for off-road cycling. For equestrians, use of the NB would range from 4 to 5 minutes 23 seconds longer. In the context of leisure use, these additional times are nominal.

Enjoyment

- 4.49 In a previous decision (Essex TWAO), NR notes that the SoS appeared to take 'enjoyment' as not encompassed within the consideration of 'suitable and convenient' but is capable of relevance as an additional factor.

- 4.50 Pedestrian and cyclist use would essentially remain unchanged save for: (i) the characterisation of use of the FB being permissive, which cannot impact upon enjoyment, and (ii) the relative but negligible increase in journey time when using the FB comparative to the TLC.
- 4.51 The NB would allow for enjoyable use by pedestrians and cyclists. NR does not anticipate that the experience, potentially in conjunction with equestrians, would be a materially different experience compared with the EB. There is no evidence the noise impact from passing trains would materially detract from enjoyment. Scenically, the NB would still allow for wide, outward views. NR considers that there is no good reason that the fencing would impinge or detract from enjoyment. Different users have different subjective experiences.
- 4.52 Only equestrians claim to be affected by loss of enjoyment. Equestrians would be likely to be low in number. The census records an average daily equestrian use of 1.14 traverses (both directions). There are many varied and attractive bridleways within, or which connect to, the locality. Whether or not an equestrian could enjoy, with comparative ease, a circular ride is not an important question for the SoS.
- 4.53 The NB would avoid the need for telephone use (and the rider possibly dismounting) to cross TLC with the prospect of bringing the rider closer to a passing train. There would no longer be a safety risk of entrapment between the gates on each side of the TLC. The NB would not change the opportunity to ride the EB. Since April 2020 the very few equestrians then using TLC must have successfully transferred to alternative bridleway routing. Therefore, a permanent switch from TLC would affect very few equestrians. Prior to closure, only experienced or adequately supervised riders (and familiarised horses) should ever have ridden the EB across TLC.
- 4.54 There is no requirement for the NB to be the most enjoyable, the test is suitability and convenience, and it is not required to meet any threshold above adequacy. The NB would materially increase the local bridleway provision.

Suitability of NB: ‘Safety implications of use with horses’ – matter 3

- 4.55 The Inquiry heard no other expert evidence besides Mr Lane. His evidence should attract very substantial weight. His overarching point is that the reaction of horses to passing trains will vary according to familiarity in conjunction with the rider’s own experience. NR submits that: *“The reasonable expectation is that only experienced equestrians will ride adjacent to the railway, and ride only with a degree of familiarisation, adjudged with regard to the individual horse.”* (para 89 of closing submission - INQ-31-1).
- 4.56 The general expectation is that no familiarised horse will be frightened by a passing train. (INQ31, para 90). Mr Lane’s expert overview is consistent with outline BHS guidance on train noise impact but is considerably more prescriptive. As Mr Lane confirms, a sudden appearance of a fast-moving train might ‘startle’ (not ‘frighten’ – a valid distinction not disputed by BHS, or any equestrian objector) a horse, but will likely swiftly adjust without further issue.
- 4.57 Even if a horse is frightened, the expectation is that a competent and

experienced rider would retain control, provide swift reassurance, and enable the ride to continue, without issue. Only a frightened horse that has reached an uncontrolled state, without successful intervention from an experienced rider, will present the real risk of bolting. Even then, bolting is not inevitable: the horse may instead twist and turn on the spot, allowing further rider intervention and calming. A frightened horse can also withhold from entering a state of flight and become less frightened as the train passes away. Bolting, bucking, or rearing would occur very rarely in overall terms. NR describes the safety risk as 'negligible' (INQ-31, para 94).

- 4.58 The horse height to train differential is not considered to have any (or any material) effect on how the horse reacts. There is no developed analysis, or any expert evidence, to argue the contrary.
- 4.59 None of the bodies/persons promoting alternative routes are sufficiently placed to understand whether or not any such options were at all feasible or deliverable in the first instance. Indeed, none are feasible or deliverable.
- 4.60 NR says that Route D and Route E present no significant comparative 'safety' advantage. A shorter section of bridleway alongside the railway might encourage a less competent rider on an unfamiliarised horse, to 'risk it', and thereby becomes a less safe route. The NB would discourage 'risk' taking.

Other equestrian safety considerations

- 4.61 There is good evidence of irresponsible and hazardous misuse of TLC by equestrians. Following robust optioneering, there is no alternative bridleway route, other than the NB.
- 4.62 Objectors' preference for Routes D and E, underly their acceptance and wider acceptability of riding adjacent to the railway, without incident. This preference mirrors use of Route D for "some years" already by local riders. The assumption must be that a responsible rider, whether a single rider or in a group, will not 'chance' whether to traverse the 60m stretch adjacent to the railway line, if they do not wish to ride alongside a train.

Impact of Scheme on the use of agricultural vehicles by landowner – matter 4(a)

- 4.63 Only Tackley Estate raises agricultural vehicle use, which distils to plot 10. This has been adequately addressed by amending Schedule 2 to the Order (APP01-1) and the note regarding illustrative field gate proposals (INQ-26).

Impact of Scheme on accessibility for all users – matter 4(b)

- 4.64 NR is required to comply with and act upon the ORR's 'Disabled People's Protection Policies: A Regulatory Statement' (INQ-15). This steers NR's policy suite on improving mobility standards in relation to all applicable aspects of the business. It means interaction with other industry policy documents, namely, 'Design Standards for Accessible Railway Stations' (INQ-16) and 'Accessible Travel Policy Guidance for Train and Station Operators' (INQ-17).
- 4.65 The inherently unsafe access over the TLC, does not allow for accessibility, in any real sense. In comparison, the FB would plainly provide much-improved step-free access for pedestrians, those with cycles, persons with reduced

mobility, and other vulnerable or encumbered users (including those with pushchairs and users with small children, etc.). Their journey and journey-times would improve considerably. Pedestrians and dismounted cyclists (combining both station and non-station users) will be enabled to cross the railway, without the potential interruption of waiting to cross.

Impact of potential withdrawal of permissive footpath access over the proposed stepped Footbridge – matter 5

- 4.66 The FB would not be an alternative to the EB over TLC. The NB is that alternative. Nonetheless, NR confirms that it would provide permissive access over the FB for non-railway pedestrians and cyclists.
- 4.67 NR argues the legal doctrine of statutory incompatibility as the reason why it cannot dedicate rights of way over operational railway assets. The relevant statutory purposes in this case are the promotion of railway safety and operational efficiency. The use of the FB by non-rail users must be secondary to preserving the needs of the operational railway. The dedication of a statutory right of way over the FB is operationally unviable, as well as unnecessary and would also be unlawful. Order Decisions have consistently found accordingly, pursuant to the High Court judgment in *R (Ramblers Association) v SoS; (2) Network Rail Infrastructure Limited* [2019].
- 4.68 Mr Lopez orally added in closing that: “*Objectors should not think that resistance to dedication should somehow signpost likelihood of future withdrawal or suspension of permissive access.*” (see INQ-31-1, para 113). Any (unforeseen, temporary) withdrawal of permissive access over the FB would remove the ability to make trips from Tackley along the EB. Even if permissive access was withdrawn (which is nowhere foreseen, even temporarily) the impact would be minimal. It would not impact on a user’s journey from Tackley village eastwards towards Pigeon’s Lock or Kirtlington as access would remain possible along the NB. The remainder of the EB would remain available albeit as a cul-de-sac.
- 4.69 NR would only withdraw permission if necessary for operational reasons. In any decision to rescind the permissive access, NR would be aware of and have regard to the value of the permissive access to the residents of and visitors to Tackley and the surrounding area.

Impact of FB on neighbouring land – matter 5

- 4.70 Concerns over potential privacy, overlook, wider amenity and light pollution from the FB are exclusively matters for the local planning authority. There would be no such objectionable impacts, there having been a wealth of assessments (Landscape and Visual Impact Assessment, a daylight assessment and Lighting Impact Assessment (NR-W4-2)) submitted with the Prior Approval application.

NR’s response to objections

- 4.71 In closing, NR made extensive comments on the evidence heard by objectors during the Inquiry (INQ-31-1, pages 44 to 66), broadly summarised below.

Tackley Parish Council

- 4.72 NR responds that the complaint by TPC (in its SoC, para 40) of “*erratic, disingenuous and...misleading*” communication is unfounded and has not been

elaborated upon. NR highlights how Mrs Collier had basically misunderstood and thought the EB was proposed for closure in full and to all users, a view she confirmed was shared by TPC members known to her personally. TPC's complaint of failed consultation should be viewed in the context of a mistake of significance. No TPC members had seen or endorsed Mrs Collier's statement and elements personal to her should be considered separately from the views of TPC.

BHS

- 4.73 BHS' objects to only part of the Scheme i.e. the NB. There is no evidence or suggestion that any committee or member of BHS is aware of or approved its SoC. The sole identifiable contributing author is Mr Steel. Neither Mr Steel nor BHS can advocate on deliverability of Route D.
- 4.74 NR suggests that the position taken by BHS is contrary to its stated objective, in effect, to promote and secure the provision, protection and preservation of rights of way and of access for ridden horses over bridleways. If it is dismissive of the NB, then it presents no actual alternative and the assessment underlying that decision is thin, incomplete and deficient.
- 4.75 Published BHS guidance (e.g. "Advice on Noise affecting routes used with horses" dated 22 November 2022 and last reviewed 14 June 2024) provides:-
- "Horses can become accustomed to noise, whether...continuous noise or discontinuous noise (e.g. ...motorway, train)... it should be assumed that noise is likely to be distressing to horses which are not accustomed to it...Temperament and experience will affect whether individual horses can become habituated to noise or whether their distress level continues or rises. It must not be assumed that a noise that is accepted by one horse will be accepted by all...A quiet rustling is likely to have greater impact than a high speed train because the former could easily be associated with a predatory animal moving into position to attack whereas a train is a continuous steady loud noise which is not clearly a predator; it can be heard from far away and the majority of horses these days have been exposed to and accepted commonly occurring mechanical noises from their birth. There are many situations of horses unperturbed by trains or motor traffic, even for the first time, in fields or on bridleways alongside a railway or motorway..."*
- 4.76 This guidance endorses BHS' own confirmation that accepts, in principle, that a bridleway, of any length, sited adjacent to and along an operational railway, is capable of being safe for equestrian use – in conjunction with a train (or trains) passing during use of the bridleway.
- 4.77 Mr Steel states (OBJ-60 W.1, para 8) that all "riders should be able to make an informed decision as to whether the [NB] is suitable for them to use or not." He does not contend or assert that an experienced rider, by reference to any site-specific characteristics of the NB, would somehow be unable to adequately make the "informed decision". For the purposes of gauging noise impacts on a horse, the BHS guidance does not differentiate between a passing motor vehicle and train. Other BHS guidance (e.g. 'Shooting and Equestrian Routes') reinforces distinguishing between sudden and graduating noise.
- 4.78 Mr Steel does not challenge any part of Mr Lane's discussion on the principle of

familiarisation of horses with train noise. Mr Steel could not identify any recorded incident of a bolting horse, or attendant injury, in connection with the use of a bridleway adjacent to a railway nationally. Having described NR's review of analogous bridleways as "deeply flawed and superficial analysis" (OBJ-60 W.1, para 10), Mr Steel accepted that approximately 8 were at least prima facie analogous. Mr Carr's attempt to distinguish the NB from others due to intermittent hedging, was a good signpost of the artificiality of BHS' criticism.

- 4.79 There is no expertise, or any analysis presented to support the proposition that a moving train "at, or close to head level" may be "more threatening" or present a "higher risk". The BHS neither mandates nor heavily prefers bridleway fencing of a particular form or material. Mr Steel accepted that there is no material objection to installing fencing along both sides of the NB.
- 4.80 Consistently with Mr Lane's evidence, BHS accepts that an inexperienced rider or unfamiliarised ride should not and would not reasonably be expected to ride along the NB (that is, even if the inexperienced rider could have reached the NB by travelling on-road – just as the EB could not have been reached). An experienced rider should be able to form their own view of the NB, both in advance, and contemporaneously, in real time.
- 4.81 The EB does not form part of National Cycle Network Route and there would be no requirement for the NB to be maintained to cycle track standard. The NB would be maintained by NR for 12 months from its completion, and by OCC thereafter, as highway maintainable at the public expense.
- 4.82 The 60m stretch would be designated as a public bridleway without affecting any private rights thereover (including vehicular).
- 4.83 NR suggests that Mr Carr conflated two issues when stating that nothing in NR's paperwork sets out how NR will be compelled to provide the permissive path. NR responds that no compulsion to provide the permissive route is appropriate or necessary, and even if it were there would be no requirement for written form.
- 4.84 It is emphasised that it is not NR's submission that the permissive path does constitute a material consideration (still less, one of significant weight) to the Inspector's and SoS' consideration of the Scheme.

Byways and Bridleways Trust (SOC-OBJ-51)

- 4.85 Save for Mrs Machin (acting BBT Secretary), actual membership of BBT positively objecting, is unknown. No witness spoke for BBT to support the merit of the "link" [provided by the EB across TLC] between Nethercote-Tackley to Kirtlington. NR states that the link remains for pedestrians and cyclists.

Bicester and Warden Pony Club (POE-OBJ-25)

- 4.86 NR's comments under this heading relate to those made by Mrs Machin whilst acting for herself and the Pony Club.
- 4.87 NR submits that the size of the Pony Club and membership in support of the SoC produced is not in evidence. Arguments by the Pony Club that the consultation process was "flawed" are unfounded in NR's view. The local riding

community was included within wider engagement, no discrete or elevated attention being merited to singularly target this specific group.

- 4.88 The Pony Club described the 'schematic diagram' in NR's published leaflet as misleading as the EB was shown in the wrong place. NR says that the diagram was separately supplemented by various accurate sources of literature, including in-person events. Not one person has been identified as actually misled.

Andrew Peake / Tackley Estate

- 4.89 NR responds to Mr Peake's 5 grounds of objection, as orally revised by Mr Morse.
- 4.90 Ground 1 is predicated on the critical error that Route D (and perhaps also Route E) will certainly not be made available, at any time, and so cannot present any actual alternative to the NB. This is by reason of an associated pre-requisite 'conditionality' mandated by Tackley Estate, which cannot, and will not, be met. This 'conditionality' comprises:
- 4.90.1 (i) undertaking comprehensive engineering and drainage works to Whitehill underpass and underground sewer, which would be entirely removed from merely maintaining adequate clearance height for vehicles is outwith the Order. It would exceed NR's authority and responsibilities, and amount merely to an obvious gratuity. Even if capable of being licensed by Thames Water, the works have not even been scoped in any detail by Tackley Estate, who has not even instructed an engineering survey of Whitehill underpass, and requested no formal scoping or assessment of the difficulty of relocating the sewer;
- 4.90.2 (ii) the permanent stopping up, to all users, of the EB, has been confirmed by OCC as being unacceptable; a non-negotiable position, which has justifiably informed NR's approach to the EB. NR is unaware of any reason why the acquisition of rights by NR would be more costly than the acquisition of land.
- 4.91 Ground 2 concerns the effects on Old Whitehill underpass addressed above.
- 4.92 Ground 3 concerns the EB becoming a cul-de-sac and termination of permissive access. NR cannot statutorily dedicate a route over the 'permissive access'. NR does not now suggest that it would need to effect a withdrawal or suspend permissive access. If permissive access was withdrawn, Tackley Estate could ask OCC to close the EB although it should not be assumed it would become redundant.
- 4.93 Ground 4 is now confined to (i) potential liability of Tackley Estate for fencing maintenance, and (ii) potential liability of Tackley Estate under the law of tort for 'occupiers' liability'.
- 4.94 Responsibility for fencing passes to the adjoining landowner, so NR on the eastern side and Tackley Estate on the western side. Compensation payable to Tackley Estate for the creation of the NB will include an element attributable to the forward maintenance cost of fencing. As to (ii), the established principle in Gautret v Egerton [1867] (affirmed in 1994 in McGeown v Northern Ireland Housing Executive [NIHE] 24 June 1994) is that persons exercising a public right of way are not visitors (or persons acting with permission of the owner) for the purposes of the Occupiers Liability Act 1957. The landowner should not be liable

for acts amounting to what has been termed 'negligent non-feasance' (as opposed to misfeasance). In this case, the landowner will not be under a legal duty to maintain and repair the public right of way. Liability for injury to trespassers is specifically excluded under the Occupiers Liability Act 1984.

- 4.95 On Ground 5, Tackley Estate has agreed that Schedule 4(3) to the Order corresponding to plots 0003 and 3a provides sufficient comfort for access by agricultural vehicles.

Cycling UK (OBJ-65)

- 4.96 The additional distance to be cycled in conjunction with the NB is negligible in the context of a total riding distance likely to be many kilometres. For a cyclist to dismount for approximately 230/240m would present no, or no substantial, loss of convenience.
- 4.97 The NB creates a link between two cycling routes of sufficient width and surface. Even if disincentivising for some cyclists, alternative cycling routes incorporating the EB remain unaffected.
- 4.98 Prior to closure of TLC cyclists using the EB to cross TLC on the level had to operate the gates, exposing them to unacceptable safety risk, being an impediment to the overall experience of fluidity.

Powers to compulsorily acquire and use land – matter 6

- 4.99 NR submits that there is very strong evidence of a compelling case in the public interest, for the (conspicuously limited) powers and rights to be granted under the proposed Order. The public interest would be served by the highly significant objectives, purposes and needs underlying the Scheme. Importantly, the Scheme is now reduced in terms of land take since initial promotion of the Scheme. NR aims to minimise impact on landowners by seeking to impose rights over land rather than compulsory acquisition, by minimising the extent of the rights required to deliver the Scheme and by locating the NB at the side of the land affected, adjoining NR's existing land in the most efficient layout.
- 4.100 NR has exercised best endeavours to minimise the temporary land take for construction (both in terms of footprint and duration) and to minimise the effect on other users, particularly Tackley Estate; for temporary access during construction, and to accommodate shared use of temporary access routing, with Tackley Estate. Exact details are for later determination.
- 4.101 Route D is not deliverable and would have comparatively greater impact on the landowner by splitting the field in farming and access terms. Route D would also increase maintenance obligations on the landowner due to there being two sets of fences, not one.
- 4.102 Mr Billingsley confirms that the draft Order is made in accordance with all relevant guidance, including a requirement to seek agreement with land and property interest owners. It is affirmed that the land and rights over land, applied for, are necessary to implement the Scheme.
- 4.103 Two outstanding objections (OBJ/62 and OBJ/70) are made against the proposed temporary use of and acquisition of permanent rights in the Order land. Both are made by statutory objectors with freehold interests (OBJ/70

Andrew Peake and OBJ/62 Anthony Crocker). Objections are also raised by individuals who hold rights over the Order land: OBJ/08 Guy Roberts [Rights of access]; OBJ/49 Helen Spencer [Rights under a transfer]; OBJ/56 Jane Collier [Rights under a transfer]; OBJ/61 Kay Chacksfield [Rights of access]; OBJ/66 Gill Withers [Rights under a transfer]. However, these objections do not relate to any of the land agency aspects of the Scheme.

- 4.104 The powers provided for in the Order are necessary and proportionate for the construction of the associated elements of the Scheme. Mr Willson resounds that the powers sought for temporary worksites, construction compounds and access do not exceed what is necessary for the construction, and that the Order will enable works to take place in a timely and cost-effective manner.
- 4.105 Mr Willson has completely appraised the engineering elements of the Scheme, through to the proposal for fencing along the NB. He confirms the (proportionate) need for construction compounds, worksites and access, in conjunction with the NB, which are proportionately scaled (with no greater land being occupied for these purposes than necessary), and well-sited.
- 4.106 For the FB construction a much larger compound is proposed at the north end of the EB, near the 'closed' level crossing on the east side of the railway (temporary acquisition plot 001), together with a storage compound for materials/lay down area and giving access to the north end of the station for the FB site location. Access to the FB construction area would be via the EB (temporary acquisition plots 003, 003a, 003b and 011), also having minimal impact on Tackley Estate's normal business. Tackley Estate would continue to access fields adjacent to the EB and any impact would be supervised and managed, in liaison with them.

Human rights

- 4.107 NR says that any interference with human rights pursuant to the exercise of powers under the Order would be lawful and proportionate to the clear public benefit derived from the Scheme, as well as the wider public interest. Any interference with Convention rights is justified and has not been the subject of any considered disagreement.
- 4.108 The eligibility for compensation ensures all appropriate recompense to offset any corresponding impacts. Separately, NR is unaware of any potential impacts on rights to private and family life, home and correspondence protected under article 8 of the European Convention on Human Rights being affected by this Scheme, of which there is no evidence or suggestion.

Whether there would be any impediments

- 4.109 NR says there would be no likely (or any foreseeable) impediments to NR exercising the powers contained within the Order. This includes with regard to implementation and funding, planning, consenting and licensing matters.

Whether all the land and rights over land applied for are necessary

- 4.110 The powers sought in the Order are considered by NR to be the minimum necessary to provide for the temporary worksites, compounds and access route

for the construction of the NB and the FB. An immediate and defined use for all land affected has been identified and justified.

5. INSPECTOR'S ANALYSIS AND CONCLUSIONS

5.1 References to earlier paragraphs in this Report are in square brackets.

5.2 I have used the SoM as the structure for most of the remainder of this Report.

Compliance with statutory procedural requirements (matter 1)

5.3 At the start of the Inquiry, NR confirmed compliance with all relevant statutory requirements.

5.4 A Consultation Report (APP05-0) and updated version (APP05-1), prepared in accordance with Rule 10(2)(d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (APP15), summarises the consultation and engagement undertaken by NR in relation to the Scheme.

5.5 An 'Affidavit of Compliance' with the provisions of rules 13, 14(1) to (8) and 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (APP15), as required by Rule 10(8) thereof, was sworn on 19 January 2024 by Francis Tyrrell, Solicitor, instructed by NR.

5.6 The initial pre-application notice of NR's intention to apply for the Order was published in the Oxford Mail on 8 December 2023. It incorrectly stated that documents would be available at the local library until 3 January [2024]. It should have said 26 January 2024, being the end of the objections period. Mr Tyrrell affirms that the error was rectified in post-application notices to clarify that documents would be available until the end of the objections period. A copy of the notice was published in the London Gazette on 13 December 2023 and a second notice appeared that same day in the Oxford Mail to comply with rule 14.

5.7 Aside from the publicity requirements, the Affidavit identifies how NR has complied with rules 13, 14 and 15 regarding the deposit and service of the relevant documents. Details are also given on the display and service of notices providing information on the application and how to make representations.

5.8 In terms of Notice of the Inquiry, Mr Tyrrell confirmed compliance with rule 13(6) of the 2004 Rules by posting site notices at least 2 weeks before the Inquiry opened and had remained in place throughout that period. An advertisement in the local newspaper (Oxford Mail) on 30 May 2024 gave details of the Inquiry.

5.9 Whilst some objectors maintain that consultation has been inadequate, no evidence has been produced to suggest non-compliance with the statutory requirements.

'Aims and Objectives of, and the Need for, the Order' (matter 1)

5.10 The updated statement of aims of 17 June 2024 (APP03-1) identifies the key objectives of the Scheme as fourfold: (i) improve safety (ii) improve service delivery (iii) contribute to improvements in local transport; and (iv) deliver cost efficiencies.

5.11 The need for the Order arises from NR's duty to assess, manage and control the risk of the level crossing for everyone and to improve safety. It follows a fatality

at TLC in 2008 and two near misses in 2019 and repeated misuse, prompting its temporary closure. TLC has been assessed by NR as high risk and in the top 10% of the 545 crossings on the western route in terms of risk, making it a priority to close. The way to eliminate the risk completely is to close the crossing.

The safety case (matters 1 and 2)

- 5.12 Prior to its temporary closure, TLC was used as a 'station barrow crossing' to access one of the platforms. Public use comprised rail users combined with pedestrians, cyclists and horse riders using the EB. Whistle boards required the train driver to sound the horn to give audible warning of the train's approach. A 'stop, look, listen' approach was required by users before deciding to cross. Telephones were provided for the convenience and safety of equestrians to contact the signaller before crossing the railway line. The signaller would instruct the caller to replace the handset and to call back once safely across the track.
- 5.13 Trains pass through on a two-track railway with a line speed of 90mph in both directions. The speed limits to the south of the station for high-speed trains is 110mph and 95mph to the north. Over 100 trains per day pass through the station, including freight trains, higher speed passenger and regional train services. Of those, 25 per day are booked to stop at Tackley station.
- 5.14 A fatality occurred on 31 March 2008 when a member of the public was struck by a train whilst using TLC. A near miss was reported on 14 June 2019 with two members of the public stepping in front of a train approaching TLC. On that occasion the rail side telephones were found not to be working correctly. A further 'near miss' on 16 October 2019 involved two elderly persons with trolley bags. Following the October 2019 incident, alongside the previous 13 incidents reported between November 2018 and October 2019, an internal decision was taken by NR to seek a TTRO to close the section of the EB across TLC.
- 5.15 At the time of the PIM, the only party who appeared to take issue with the need to close TLC was BBT. Whilst maintaining that position in the agreed Statement of Common Ground with NR, BBT did not actively advance its case or explain why it considers the closure on safety grounds to be unmerited.
- 5.16 When the Inquiry opened, Mrs Machin said that she contested the safety case for closing TLC. Mrs Collier (who represented TPC) similarly came forward in a personal capacity to challenge the need for closure on safety grounds. It subsequently emerged that Mrs Machin and Mrs Collier both in fact accept that TLC should close on safety grounds. Their only point on this issue was that TLC was safe for equestrians when used correctly, which they always did personally. The fact remains that not all equestrians did use TLC as intended, as per the evidence of Mr Aston [4.37].
- 5.17 Acts of misuse as described by Mr Greenwood [4.5], including accidental human error whilst distracted and/or failing to check for trains, are all obvious factors influencing risk, as supported by research statistics from the Rail Safety and Standards Board (NR-W8-2 [JG12], page 377). Risks to TLC users from the 'hidden train factor' [4.5] were highlighted in the Rail Accident Report carried out by the RAIB into the fatal accident at TLC in 2008 (NR-W8-2 [JG11]). It explains (at page 362) that the visibility and audibility of trains approaching on the up line is reduced when a train is stationary at the down platform. The layout of the

station platforms and crossing means that a train travelling at 90mph becomes fully visible less than 3 seconds before it reaches TLC.

- 5.18 It is plain that TLC cannot reasonably be made safe for ongoing use by the public. Little resistance to that position is taken.
- 5.19 Cycling UK (OBJ-65) submits that the feasibility of installing miniature stop lights and/or audible warning devices do not appear to have been considered. However, it is no more than an assertion unsupported by any analysis or evidence to indicate that would be an appropriate solution. As such, it carries little weight. NR insists that there are no additional improvements or enhancements that could be made to the arrangement or operation of TLC to make it safer than it was before the temporary closure.

Improvements to service delivery, local transport & cost efficiencies (matter 1)

- 5.20 Three level crossings (Tackley, Sandy Lane and Yarnton Lane) located along this same Oxford corridor limit the frequency of train movements for safety reasons [3.3, 4.11, 4.19]. All three are planned for closure although Sandy Lane and Yarnton have been deferred (NR-W1-1, para 6(e) and NR-31-1, para 26). Once all three are closed, NR expects services to increase. There is existing demand for more frequent passenger services between Banbury and Oxford, as Mrs Holbrook explained in oral evidence.
- 5.21 Mr Greenwood refers to the Order promoting operational efficiency through removal of the restriction to line speed and capacity enhancements, avoiding potential disruptions caused to passenger and freight services from any incidents at TLC, which can affect the wider network (NR-W8-1, para 3.19).
- 5.22 As set out by Mrs Holbrook (NR-W1-1, para 6.4(b)), closure of TLC and replacement with a FB would allow continuous train operations without interruptions thereby improving efficiency. It is stated that the FB would require less maintenance than a level crossing, the estimated savings being circa £5,000 per annum (NR-W1-1, para 6.5(b)). Unrestricted train movements through Tackley station would also allow better train service recovery times with increased line speed from 90mph to 95mph for passenger services. Improved performance is anticipated by reducing delays and cancellations on the network.
- 5.23 NR considers that investment in the FB will encourage more customers to use rail services who were previously deterred by safety and accessibility concerns, bringing more revenue into the railway.
- 5.24 The operational resilience and associated benefits cited by Mrs Holbrook in terms of accessibility, efficiency and long-term investment (NR-W1-1, pages 5 and 6) focus on the provision of the FB, albeit NR was at pains to emphasise that it is not part of the Scheme. Mrs Holbrook confirmed that no financial data or statistics were relied upon, or analysis conducted, in arriving at the conclusion that there were performance and cost saving benefits.
- 5.25 In eliminating the risk factors to service disruption from misuse of TLC and removing the associated line speed limitations, there must clearly be performance and local transport benefits. The level of potential costs savings from the Scheme is unclear. However, the Scheme would be a critical stage in delivering the wider and longer-term strategic aim of increasing rail capacity for

both passenger and freight services along the Oxford corridor thereby delivering economic benefits.

Adequacy of consultation conducted (matter 1)

- 5.26 Given the references in the written objections to closure of the EB and loss of a circular route, it is apparent that there is a mistaken belief amongst at least some objectors [2.63, 4.72] that the EB would be extinguished in its entirety and not just the section across the railway line where TLC would be closed. This goes some way to demonstrate a lack of clarity in the messaging given by NR to the public.
- 5.27 It was apparent during the Inquiry, and it is a recurring theme among the written objections, that there is mistrust of NR by local people who clearly feel ignored and disillusioned. Some have expressed much stronger emotions.
- 5.28 Mr Greenwood was candid that historically after the 2008 fatality and the safety improvement recommendations that followed, NR sought to re-engage on the subway, but no further feasibility studies were undertaken. The issues had not been understood, it was not handled right and there had been misreporting.
- 5.29 The long and convoluted background, changes in personnel and confused messaging will not have helped to build trust. Even the Inquiry documents listing the sequence of events, record (NR-W2-1, page 11) that during a public consultation at Tackley village hall on 10 June 2019, NR had stated that the preference was for a stepped footbridge with lifts and new infield bridleway. Yet, 4 months later on 22 October 2019 it is recorded (on page 4) that NR had concluded that a subway south of the station was 'the best solution', seemingly reverting to its earlier position. No real explanation for the apparent inconsistency was given.
- 5.30 Mrs Machin, for herself and the Pony Club (POE-OBJ-25) pointed out that the 'schematic diagram' of the existing and proposed routes in NR's published leaflet was inaccurate. It incorrectly showed the existing and proposed routes as a 'mirror image'. It is suggested this was misleading and Mrs Machin queried if it invalidates the consultation process. I consider not. There is no evidence or complaint of anyone actually being misled by the leaflet. There is no basis to claim invalidation of this lengthy and detailed process from a single error that NR confirms was rectified in documents and presentations that followed [4.88]. Mrs Machin had clearly understood what was intended.
- 5.31 Objectors have expressed frustration and criticism at the level of engagement from NR over the years. It is important to focus on the consultation process for the Scheme now pursued. This does appear at times to have lacked the level of clear communication that the public would rightly expect. Nevertheless, people had sufficient understanding of the Scheme to engage in the Inquiry process and to articulate their concerns. That being so, I find that public consultation on the Scheme has been adequate.

Inspector's conclusions on matter 1 and the safety case in matter 2

- 5.32 There is a clear and compelling case for permanent closure of TLC and extinguishment of the corresponding section of EB for safety reasons. It has been sufficiently demonstrated that the Scheme is needed and that the aims and

objectives for the Scheme would be met. All statutory procedural requirements have been met and the consultation conducted was adequate.

Main alternative options (matter 2)

- 5.33 Under section 1(1) TWA the SoS may make an order relating to, or to matters ancillary to, the construction or operation of a transport system, including a railway. This is subject to section 1(1A) and provisions within the Planning Act 2008 excluding powers to authorise development and ancillary provision.
- 5.34 Section 5(6) TWA states: “*An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied- (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required*”. The *Guide to TWA Procedures* states, in Annex 2 (page 105): “*If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users*”.
- 5.35 The extinguishment of the section of EB over TLC would remove the rights of the public to cross the railway line on foot, by cycle and horseback. The remainder of the EB to the east of the railway would become a cul-de-sac. It would only be accessible to the public in the exercise of public rights via the lane, a restricted byway, to the south of the station. An alternative right of way is clearly required, and NR does not seek to argue otherwise.
- 5.36 Various options have been considered by NR over well in excess of 20 years. Table 3 in NR’s updated SoC (SOC-NR-1, para 6.1) summarises the alternative options scoped for the Scheme.
- 5.37 An equestrian subway beneath the railway line at the existing location of TLC was explored [4.22, 4.23]. Mr Willson explained how NR thought that the subway would cost in the region of £7million. By the time the tender was returned in October 2022 for the design and build, the cost had risen to circa £11million (subject to inflation) making the option untenable. The construction process would also necessitate closure of the total railway line for at least 5 days causing considerable disruption. Rail replacement services would be required for passengers, and freight services diverted. In addition, the option involved significant engineering works, complicated by the topography and large excavations to install approach ramps. The installation of 800m of pipework would also be required to drain the site due to the presence of an aquifer in the local area.
- 5.38 NR specifies (SOC-NR-0) that the subway was considered unviable from a financial and engineering standpoint. It led to a review of the optioneering undertaken in 2020 on which NR had commissioned an Independent Assessment (‘IA’).
- 5.39 The IA (APP12.14) dated April 2022 assessed 11 options. It records that NR preferred Option C (i.e. Route D) whereas the report recommended Option B being the NB now pursued as having least disruption to the existing field use. Option C was considered to have adverse environmental impacts due to the construction of an acoustic/visual barrier to increase horse safety along the stretch from the station. No such barrier is proposed for the current Scheme which encompasses the 60m stretch from the station.

- 5.40 Option D in the IA was a variant of Route D but avoiding the 60m stretch and routing equestrian users down Lime Kiln Road. This approach was advocated by TPC at the Inquiry [2.60], and I inspected the entry point from the field side during the accompanied site visit. This would take equestrians directly through a residential area. Neither the views of the residents nor potential users have been canvassed for the Inquiry. It was not an option advocated by the BHS.
- 5.41 The in-field route (Route D) was discounted after the landowner, Mr Peake, complained of the impact on the use of the land by effectively splitting the field in two, minimising the use of the land and proposals for livestock grazing. He additionally sought the extinguishment of the entire EB on his land and major works to the underpass that NR would use to access Tackley station in the construction of the FB. These same demands for works to the underpass are made by Mr Peake in relation to the NB [2.14]. Moreover, Mr Morse confirmed that Mr Peake wishes the EB on his land to become a permissive path instead of carrying public rights of way whether an Order is made for the NB or Route D [2.18].
- 5.42 Mr Greenwood openly stated that the NB along the alignment proposed had not been NR's preference. It was the only logical option that could be delivered. That was because Tackley Estate said its land was not available unless NR did things outside its gift. After consultation, it became apparent that there would be significant opposition to extinguishment of the EB by the local community.
- 5.43 Mr Willson acknowledged that the surfacing of the Old Whitehill underpass is poor. That was plain to see on the site visit. The surface is very uneven and there were water filled/muddy potholes on a hot summer day. NR denies damaging the surface in 2021 when it constructed the temporary footbridge at Tackley station and refers to photographs taken in 2018, which show the rutting. Whoever caused the damage is not relevant to the making of this Order.
- 5.44 Mr Willson confirmed that NR wants a level, compacted surface for its construction traffic to build the permanent FB. NR would provide a levelled metalled surface but no improvement. The extra works in lowering the track would be for farm equipment. Mr Willson thought those works would certainly require the bridge being underpinned. The Inquiry also heard arguments from both Mr Morse (for Mr Peake) and NR witnesses on whether a sewer beneath the track would require relocation [2.16, 4.90.1]. NR suspects that excavating beneath a railway bridge may de-stabilise it and the works required are more complex than re-locating a drain.
- 5.45 Ultimately, no evidence was presented that the track beneath the railway bridge would need to be lowered to accommodate NR's construction traffic and for the Order to be deliverable.
- 5.46 Although TPC prefers the Barwood bridge option [2.59], it is not a realistic solution. Mr Willson clearly and carefully explained how the bridge location would be a long way from the railway station. There were significant engineering risks of eroding the embankment face. There would need to be two bridges built otherwise rail users would need to use Nethercote Road to access one platform and upon their return use Barwood bridge. Moreover, compliance with mobility

standards could not be achieved through the construction of ramps. Additionally, horses would be placed close to trains on the east side of the railway.

- 5.47 No real appetite has been expressed by anyone for a new bridleway along Route E, the western infield route. At the Inquiry there was consensus that this is a less favourable option than Route D. Poor ground conditions exist to the west of the Route E alignment. It is near to the stream in Flood Zone 3 (being at the highest flood risk) and the land becomes waterlogged presenting drainage challenges. Excavation would be needed to reach solid ground, structures built across the stream and culverts dug. The construction cost is estimated by NR to exceed £1million. It is not a good option for all those reasons.
- 5.48 A northern route was also assessed but considered inappropriate by NR [4.25] due to the length of the alternative bridleway and potential need to utilise compulsory purchase powers with two separate landowners. It might be that the possible need for compulsory purchase could be overcome in the same way that NR has altered the Scheme to acquire rights only in land to deliver a new bridleway. However, issues over the length of bridleway would remain along with engineering constraints on achieving a full width bridleway due to the steep embankment slope. Horses would still be placed close to trains on the east side of the railway. A separate bridge or subway would also be required for rail users, adding to costs.

Inspector's conclusions on matter 2

- 5.49 At the time, there was reasoned justification to dismiss all the main alternative options under consideration. Route D had been NR's preferred option. In pursuing the NB instead, NR believed it would be the most deliverable option. So far, that has not proven to be the case with the landowner maintaining his demands. Mr Willson stated that from NR's perspective there was no difference in the construction costs between Routes D and F (i.e. the NB). Having clarified Mr Peake's position during the Inquiry, and the nature of the objections raised, it may be concluded that Route D very much remains an option.
- 5.50 As per [5.32] there is a clear and compelling case for extinguishing the bridleway at TLC on safety grounds.

Suitability of the proposed bridleway for all users (matter 3)

- 5.51 The safety implications of use of the NB with horses was by far the most contentious issue upon which most objectors focussed. A significant amount of Inquiry time was given to allow objections to be aired and responded to. As evidence unfolded, it also prompted NR to produce more analytical material.
- 5.52 The written objections reinforce the amount of disquiet, particularly among equestrians, over the proposals to site the NB parallel with, and near to, the railway line with frequent and regular services, including high speed trains and freight trains. NR sought to downplay the level of public concern with reference to the low levels of public attendance at the Inquiry. However, the vocal few were representatives of the wider community, as reflected in the relatively high number of registered objections (79) for the population. Of course, people have jobs and other commitments. The numbers taking time to attend an Inquiry is not reflective of sentiment or concerns.

- 5.53 It strikes me that NR's assertion in closing (INQ-31-1, para 74(a)) that BHS accepts the NB in principle in safety terms, is misconceived. My understanding of BHS' position is that it accepts in principle that bridleways besides railway lines can be used safely by equestrians, but not this particular NB.
- 5.54 By definition, the NB would be available for use by horse riders, as one of the three categories of lawful user. The DfT Guide to TWA Procedures sets out (at Annex 2) that the SoS would wish to be satisfied that an alternative right of way "will be a convenient and suitable replacement for existing users". It is not a case of establishing what is the most convenient and suitable route as BHS suggested (INQ-29, para 22). Rather, the point in issue is whether the proposed NB would be a convenient and suitable replacement for existing users of the EB across TLC. It does not need to be the best option for the intended users so long as the proposal meets that threshold.
- 5.55 The evidence of NR's own expert, Mr Lane, is that the NB is suitable provided the rider is experienced and riding a horse suitably familiarised with trains [4.55-4.57]. That is stretching the meaning of suitability if it only suits those within a limited category. It is also not convenient if the limitations constrain use by those for whom the bridleway should be intended.
- 5.56 Sensibly (and in line with the DfT Guide) comparisons should be drawn with those for whom the EB over TLC was used prior to its temporary closure. The evidence of equestrians who attended the Inquiry and who were representatives of the local riding community, was that TLC could be used by a wide spectrum of riders, including children, with supervision provided for inexperienced riders.
- 5.57 There were places of refuge on either side of the track where a rider could stand back and wait for a train to pass. Of course, the distance across the track is short. The proposed NB on the other hand is over 900m adjacent to the line. At present there is tree cover and vegetation providing a visual barrier of the trains along many sections. On my site visit I was shown broadly how much of this natural cover would need to be cut back or removed to accommodate the NB, exposing passing trains to clearer close view. A survey is yet to be commissioned to establish the precise extent of vegetation clearance required.

Equestrian Evidence of Charlie Lane (and others)

- 5.58 Charlie Lane was called by NR as an expert witness in equestrian matters, having first been approached by NR in May 2023. Mr Lane stated that he has over 55 years' experience of riding and training horses.
- 5.59 When asked whether Mr Lane expected a spooked horse to bolt through a fence onto the railway, he replied that it was "so unlikely as to be inconceivable." A horse would not try to go over or into the fence as a horse would not go towards a train in an attempt to get away from it. If going on a ride, a rider would want to know where the way is going. They would not assume just because it is a bridleway that it is alright to ride. It would not be "responsible" for a rider to use the NB if they knew their horse was spooked by trains.
- 5.60 It was Mr Lane's oral evidence that a horse that was familiarised with trains would be needed for any of the three routes (i.e. the NB, Routes D and E). If a rider knew their horse might be spooked, Mr Lane described it as "Russian

- Roulette” to proceed, even along the 60m stretch. In his written POE (NR-W6-1), Mr Lane had said (paragraph 50) that if horses are entirely unfamiliar with trains, then the faster, noisier, and closer the train is, the greater the risk that the horse will be frightened. However, once familiarised with trains, at any speed, he would very much expect they will be accepting of trains however fast, noisy, and close.
- 5.61 To illustrate the point, electronic links for two video clips were provided. During Mr Lane’s evidence, I agreed with some reluctance to the two short videos being shown. I made it clear that I had not clicked on the links previously provided for cyber security reasons. The videos were displayed on the large overhead screen at the Inquiry venue so that all attendees could watch. Each clip lasted around 25 seconds. The first clip from a YouTube video showed two horses being ridden along a lane. The ears of the following horse flinch briefly as a train passes by on the other side of the hedgerow. The second clip from Facebook showed two children on ponies being led a short way along a route beside the railway whilst a train sped by.
- 5.62 I queried the value of the videos when the authenticity and source was not established and it was unknown whether, for instance, the content had been staged, edited, or adapted. My observation prompted NR to subsequently produce a note on authenticity (INQ-07). The note confirms the first video file was uploaded on 26 January 2019 and the second on 10 October 2020 with the caption: ‘This must come pretty close to bombproof’. The videos are confirmed as having been posted from accounts unconnected with NR or Charlie Lane and include a screenshot of the locations where they were recorded. BHS confirmed it took no issue with the authenticity of the videos.
- 5.63 Of course, the experience of the horses and riders shown in the videos is unknown. The comparative head height to trains, distances and noise levels are unclear. All things considered the videos do not provide good evidence on which sound judgement can be exercised and offer very limited support to the oral evidence. They simply illustrate that it is possible in some circumstances for some horses and riders, including children being led, to ride safely for a short distance beside a railway line as a train passes. They do not help much in the context of this case.
- 5.64 There was disagreement between Mr Lane and Sue Eeley on how easily a horse can be familiarised with trains and whether there are comparisons with road traffic familiarisation. Mr Lane acknowledged that it does take some training to familiarise a horse and it was “not usually straight off.” It seems to me that the ease or difficulty of familiarising a horse with road traffic does not particularly assist. It may be anticipated that more horses will be familiarised with road traffic than trains. The replacement bridleway would be open to the public generally, meaning that riders of all abilities could use it on an unfamiliarised horse.
- 5.65 Mr Lane had verbally added that you would not want an inexperienced rider on an unfamiliarised horse along the NB and that equally applied to Routes D and E because of the 60m stretch. Mr Lane considered it “foolhardy” to ride down the 60m stretch on an unfamiliarised horse or if the rider is inexperienced as they could not be sure a train would not go past. An experienced rider might chance it, but their judgement would be poor.

- 5.66 In his POE (NR-W6-1), Mr Lane says (at paragraph 65) that if the horse is unfamiliar with trains passing then an inexperienced rider should certainly not be using the EB over TLC. Sue Eeley responded to say that only the lead horse, with the adult sent on ahead to phone, had to approach the track. The inexperienced riders were held back until the signalman had said it was safe to cross. Mr Lane replied: *"Of course I accept that a horse which is unfamiliar with trains passing, ridden by an inexperienced rider, could use the level crossing if given appropriate assistance. The same rider and horse combination cannot use the New Bridleway [emphasis added]" [INQ-20, page 5] [2.76].*
- 5.67 Nevertheless, Mr Lane insisted the NB would be suitable for equestrians, but the clear message from his evidence was that the suitability is with the caveat that the horse is familiarised with trains. He would not expect a familiarised horse to be spooked. He also indicated that the rider should be experienced [4.55- 4.57].
- 5.68 The Inquiry heard from Dr Jo Hales, a veterinarian and experienced rider herself, who was called to give evidence by the BHS. Dr Hales said that there was only one of her own 9 horses/ponies that she would even think of using along the NB. In her view, the NB is "very definitely" not safe and that would be so whatever type of fencing was used due to the proximity of the railway line. She described the severity of injury that could be caused to a horse essentially trapped between fencing on either side and trying to flee. Of course, a horse could be injured in any environment if it became spooked.
- 5.69 Mr Lopez insisted that Dr Hales' evidence spoke only of the consequences of a horse striking the fencing. The point that I took Dr Hales to make is the heightened risk of injury arising from: (i) the proximity of the horse to trains increasing the likelihood of a horse becoming spooked, and (ii) the presence of fencing on both sides for a considerable distance offering no means of escape. Logically, these are factors capable of increasing risk of incident and consequential injury to horse, rider and potentially others.
- 5.70 Mr Steel, for BHS, accepted that there was a 'lacuna' in his evidence by not specifying anywhere that BHS' preference was for the NB not to be fenced on both sides or for a robust post and rail fence. He further accepted that the type of injuries shown in the graphic images produced by Dr Hales were "not likely". Mr Steel does not believe that the nature or height of fence would in itself cause an incident. Dr Hales agreed with Mr Lopez that the only relevance of the composition of the fencing was if the horse strikes the fence.
- 5.71 Irrespective of the general preference by riders for an unfenced bridleway, there was acknowledgement that it would be impractical in this case. There is the railway on one side and a cultivated field on the other, which the landowner understandably wants protected for use by livestock. The specification of fencing is a matter of detail that can be agreed once a TWAO is made.
- 5.72 Of course, bridleways do exist near railway lines. Mr Steel, for BHS, accepted that it is not inherently unsafe to ride within earshot of trains. He considers that noise is particularly relevant to safety as one element among a combination of other factors. Much was made by NR during the Inquiry over whether BHS' position was consistent with its own published advice and guidance. The arguments go nowhere given that the advice and guidance is of course generic

in nature. NR is correct that BHS' "*Advice on Noise affecting routes used with horses*" [4.75] makes no distinctions in the precise proximity of a bridleway from the railway, the level of noise source emitted from the passing train, type of train passing or the length of bridleway. Nevertheless, it does not mean such matters are irrelevant or unimportant. It is uncontentious that horses can be unaffected or become accustomed to noise. It clearly depends on the situation.

- 5.73 Sue Eeley explained that membership of the Pony Club ranges from ages 3 to 25. Mr Lane agreed that Pony Club membership is widely representative of child and young person riders of all ages and abilities.
- 5.74 Reference was made by objectors to the Household Cavalry incident in London where six horses unseated their riders and ran loose. In oral evidence Mr Lane described this incident as rare as all the horses were simultaneously spooked at an unusually frightening sound (construction site rubble dropped from height). Comparisons could not be drawn with the proposed NB as they are "totally different situations". In Mr Lane's opinion, a single frightened horse will be expected to normally be calmed by the presence of one or more other calm horses. In the Household Calvary incident, the noise was immediate and right next to the horses, whereas in this case trains would be heard coming.
- 5.75 Sue Eeley disputed that the NB would provide access to the same circular riding route, because the NB would only be suitable for familiarised horses, which by definition rules out others. In response, Mr Lane states (INQ-20) that if a rider uses the NB, "*then this does provide very much the same circular riding route as that provided by the existing bridleway. The route is very much the same. I accept that only horses familiarised with passing trains will be such a user.*" This last sentence is repeated by Mr Lane (in INQ-20) in response to other points.
- 5.76 Whilst emphasising that it is not a matter of equestrian expertise, Mr Lane stated that based on his experience, it is possible that a rider standing at the now defunct level crossing gates might not hear a fast-moving train until the train is immediately close and/or passing.
- 5.77 A significant point of contention arises over the safety of use by equestrians of the 60m stretch that forms part of both the NB and Route D, as promoted by BHS and Mrs Machin. Both Sue Eeley and Mrs Machin say that it is perfectly possible to avoid being along the 60m stretch when a train comes by 'stopping, looking and listening'. If the rider hears a train coming whilst already there, then the rider can just turn around and trot back out. These comments followed the evidence of Mr Lane that the NB and Routes D and E all carry a risk of meeting a train along the 60m stretch, albeit he accepted that the risk was greater along the full stretch of the NB.
- 5.78 Mr Lane disagreed that 'stopping, looking and listening' will provide a foolproof way of ensuring a train is never encountered. He maintains that a horse should only use the 60m stretch if it is familiarised with trains. If so, the horse should be able to safely encounter a train anywhere along the length of the NB (or any other long bridleway that runs alongside a rail line). Mr Lane considered it foolhardy to take a group along the 60m stretch with horses not familiarised with trains, just as it would be "foolhardy" to take the same group along another bridleway that runs alongside a different rail line elsewhere in the country.

- 5.79 Under cross examination, Dr Hales (an Equine Vet called by BHS) acknowledged that the 60m stretch would not be safe for every single horse and every single rider, but in her opinion, it would be safe for the majority. A level of common sense would be needed. Gin Langstone, an Equine Behaviourist (also called by BHS) described it as “foolhardy” for a rider to try to ride along the 60m stretch whilst a train was going by. Miss Langstone pointed out under cross examination that a rider can make a judgement call along the 60m stretch but cannot do so once along the remaining 860m.
- 5.80 It seems to me to be a matter of risk level and control. If a train is seen or heard before entering the 60m stretch, then there is reasonable opportunity for the rider to react. The chances of a horse rider being along the remaining 860m stretch of NB when a train passes by must be appreciably higher than whilst along the initial 60m stretch simply because it would take much longer to ride that distance. Thus, the risk of encountering a train must be far higher along the NB than Route D.
- 5.81 Those equestrians who have been granted licence by Tackley Estates already use the 60m section to access the licensed route, which is said to be broadly along the alignment of Route D. I saw on my site visit that the licensed route at that time was along a cleared strip further in-field than Route D. Nevertheless, from the accounts given, the equestrians who gave evidence are content to use the 60m stretch, but not the remainder of the NB.
- 5.82 Equestrians would be affected by the extinguishment of the EB across TLC more than any other category of user. Pedestrians could move between points either side of Tackley station quite quickly and easily whilst permissive use remained. Dismounted cyclists could similarly use the lifts and FB between those same points albeit not as easily as pedestrians. Utilising the permissive access is not an option for equestrians.
- 5.83 As per the oral evidence of Mrs Holbrook, the predominant reason and driving factor for the Scheme is one of safety. I suggest that safety is no less of a factor for users of the NB. Not exclusively, but most equestrians who gave evidence said that they would not use the NB due to safety concerns. That was so even on a “bomb proof” horse (see also OBJ-24).

Analogous bridleways

- 5.84 Mr Steel acknowledged that 8 of the examples on NR’s list (NR’s SoC, page 78) could on the face of it be analogous bridleways [4.78]. Clearly, it does not automatically follow that the NB must be suitable. Public bridleways come into existence in different ways. Indeed, railway lines may be built after a historic route was established. There will be different levels of use. The obvious question is not only whether the physicality and circumstances are comparable but whether riders of all abilities (and on horses unfamiliarised with trains) can safely use the bridleways.
- 5.85 Every case must be looked at on its merits. In this instance, the requirements of section 5(6) must be met. In creating an entirely new bridleway, the alignment is the subject of considerations of convenience and suitability very possibly not in play when the bridleways identified by NR were recorded in the DMS.

- 5.86 I read nothing into Mr Steel being unable during cross-examination to say if there have been any incidents involving horses along bridleways near to railway lines nationally. There is no requirement for incidents to be reported to the BHS and he is not the person who collates data of any such reports that the BHS happens to receive. Understandably, Mr Steel could say no more on the point than he was not personally aware of any incidents.
- 5.87 The presence of other bridleways located alongside railway lines is of little assistance on such limited information. Much more analysis of the example bridleways and their usage would be needed for it to be meaningful and to draw any reliable comparisons.

Availability of other circular routes

- 5.88 When it emerged in evidence that riders such as Mrs Collier, Mrs Machin and Mrs Eeley had found other circular routes to ride during the 4 years of temporary closure of TLC, it prompted NR to produce a paper on circular routes in the area. This provoked a somewhat angry response. BHS [2.46] and Mrs Machin [2.80] sought to demonstrate that the illustrated routes involved roads with national speed limits that were unsuitable for equestrians. Those riders who gave evidence were able to use other circular routes under the licence of Mr Peake.
- 5.89 To my mind, whether there are other circular riding routes available to equestrians was an unnecessary distraction from the point in issue. The line of argument is akin to saying the proposed NB is either not needed for equestrians or that it would attract little use anyway. Neither is the test.
- 5.90 The availability of other routes may limit the impact upon those equestrians who decide not to use the NB and can make other choices. From that viewpoint it may be relevant to a limited extent as an 'other consideration' in support of the Scheme if other options exist, but it is not pertinent to suitability and convenience. The fact remains that section 5(6)(a) prohibits the extinguishment of a public right of way unless an alternative has been or will be provided. In drafting the Order, NR has not sought to argue that the provision of an alternative right of way is not required under section 5(6)(b).

Enjoyment factor

- 5.91 Upon my querying his interpretation, Mr Carr suggested that enjoyment of a route is to be a factor for consideration in establishing convenience and suitability [2.33-2.34]. I disagree. In my view the concepts differ. Suitability is about the ability to use the route for its intended purpose. Convenience would ordinarily concern the ease of use, which could be influenced by various factors, including comparative distances, destination, connectivity, and purpose. 'Enjoyment' on the other hand is about how a person experiences a route.
- 5.92 Mr Carr sought to draw analogies with the compulsory powers of the SoS within section 26 of the Highways Act 1980 to create a bridleway. In the extract from the Encyclopaedia of Highways Law (INQ-24-3) it explains:

"..... this section [s.26] gives power to local authorities and to the Secretary of State to create footpaths or bridleways by order-imposing the path on the landowner. The process is somewhat similar to compulsory purchase although

the effect of the order is not to acquire the land over which the public rights of way will be created but to acquire compulsorily the right for the public to pass over that land. Compensation will be payable to the landowner in respect of the acquisition of the right under s.28..."

- 5.93 Under section 26(1) of the Highways Act 1980 regard must be had to the extent to which the new path or way would add to the convenience or enjoyment [emphasis added] of a substantial section of the public. This is an explicit statutory requirement specific to section 26. Whilst the process in section 26 is broadly similar to compulsory purchase, they are not the same, and there is no explicit requirement to consider 'enjoyment' under section 5(6).
- 5.94 That is not to say that 'enjoyment' is irrelevant, as NR appears to accept [4.49-4.54]. Enjoyment can be an 'additional factor' or 'other consideration'.
- 5.95 Mr Lane readily agreed that Route D or E would be preferable for equestrians than the NB in terms of the experience, being further away from the railway line. When asked to elaborate, Mr Lane said it was nicer to ride away from roads and railways where it is more of a countryside environment. The reason is largely based on noise. Routes D and E are quieter and more peaceful routes than the NB. He drew no distinctions between Routes D and E, describing them as "the same" as the NB in terms of distance and connectivity to the wider network.

The intended surface of the new bridleway

- 5.96 As set out in the POE of Mr Willson (NR-W5-1, para 5.7), the design of the NB would have a 4m wide path (4.5m between fences) comprising type 1 stone material and then 3mm of stone dusting to provide a surface suitable for pedestrians, cyclists and equestrians. Mr Willson explained how the surface would be scraped to remove vegetation before a geotextile membrane was laid beneath 150mm of stone. The stone dusting would fill any cracks.
- 5.97 Complaints by equestrians [2.47] over the type of surfacing are not an obstacle to the Scheme progressing. Horse riders may prefer a grassy central strip, but they would not be the only users. Walkers, including those with dogs, prams/buggies, wheelchairs etc, and cyclists would also need to be accommodated.
- 5.98 In oral evidence Mr Willson said that the proposed stony surface is intended to replicate the EB to the east of the railway, albeit grass has grown over the stone. As long as it was viable and appropriate for the 3 user groups, Mr Willson confirmed that NR would be happy to discuss alternatives. If the Order is made, the design would be completed and consulted upon. Details of the surfacing would be finalised alongside OCC who would ultimately maintain the bridleway.

Other users

- 5.99 Cycling UK (OBJ-65) says the proposed permissive use of the FB and lifts by cyclists is significantly less convenient. NR confirmed at the Inquiry that cycling on railway platforms is prohibited. Cyclists would need to dismount and push their bicycle, but lifts would be available for use as part of the FB development. Cycling UK estimate the diversion to be in excess of 250m. The distance is not excessive when viewed in the context of removing the safety risk of navigating across the railway line. Cyclists may dislike using the lifts, but that is unlikely to

be any more of an inconvenience than needing to wait at TLC until it was safe to cross.

5.100 As now acknowledged by NR (see para 5.119 below), the provision of permissive access through the railway station cannot be relied upon in terms of section 5(6) TWA and the related tests of suitability and convenience. No mention is made by Cycling UK about the suitability of the NB. If cyclists are not rail users, it would be anticipated that they are recreational cyclists much in the same way as most equestrians and pedestrians. The NB would form part of a wider network that would remain accessible. The creation of a cul-de-sac path for the EB would remove a circular route, impacting upon enjoyment for all users, not just cyclists. It is a disbenefit for existing users.

5.101 TPC maintains that the NB would be unsuitable to other users besides equestrians [2.57]. This position reflected concerns expressed in the written objections of pedestrians encountering a spooked horse and associated risks to welfare, particularly to children, dogs, and those with mobility issues. Such arguments are based upon the risk of being confronted with a rearing or bolting horse/s frightened by a train. That risk appears to be extremely low if horses taken along the NB are familiarised with trains and ridden by experienced riders. Not all horses and riders will fall within that category. Of course, the risk to other users that arises from an unfamiliarised horse or inexperienced rider cannot easily be gauged. Ultimately, the NB would be convenient and suitable for recreational use by pedestrians and cyclists in terms of width, surface, position and connectivity. The question returns to its suitability for horses.

Inspector's conclusions on matter 3

5.102 I am satisfied that the NB would be suitable and convenient for pedestrians and cyclists. For safety reasons, the NB should not be used with horses unfamiliarised with trains and/or inexperienced riders, a view shared by those with equestrian expertise for both NR and objectors. There is a conflict in views over whether the NB would be safe for any rider.

5.103 Whilst Route D would also utilise the 60m stretch where safety concerns also arise, the risk overall should be significantly reduced given its relatively short length.

Impact of the scheme on the use of agricultural vehicles by local landowners, and accessibility for all users (matter 4)

5.104 It became apparent at the accompanied site visit that the alignment of the south-western end of the NB, as originally shown, would cut across the field leaving a parcel of agricultural land severed from the remainder of the field. The landowner was concerned about accessibility of the field boundary hedge for maintenance purposes with large machinery once the NB was fenced. It also prompted the question of whether more land than necessary would be affected by the proposal given the in-field alignment.

5.105 The revised alignment moves the NB closer to the field edge boundary, following the hedge line. Of course, the line drawn on the map is an approximation, subject to survey, but that is true of the proposed NB in its entirety. On behalf of the landowner, Mr Morse confirmed that the revised alignment shown on APP07-2 should allow sufficient space for maintenance of the field boundary

hedge [2.11.2]. He reiterated that the existing field gate should not be narrowed in any way. NR is confident that enough space exists 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 by this assurance. He just wished to see the points of access correctly illustrated on the plans. This is a matter that can be resolved once detailed plans are drawn up following survey of the land.

- 5.106 Mr Willson also gave assurance that NR will consult on the specification for gates (including furniture) and fencing (including height).
- 5.107 In terms of accessibility, NR has concentrated on the benefits of the FB, but consideration is required to the Scheme. Section 149(1) of the Equality Act 2010 imposes the Public Sector Equality Duty ('PSED') on a public authority or person exercising a public function. This requires due regard to be given to the need to eliminate conduct prohibited by or under the 2010 Act, advancing equality of opportunity and fostering good relations between people who share a relevant protected characteristic and those that do not. Due regard should be had to any impact on any person with a relevant protected characteristic and where there are disbenefits these need to be considered with regard to the overall benefits of the Scheme.
- 5.108 The accessibility of the proposed NB is a factor to be taken into account when considering whether the PSED would be discharged. The NB would be accessible to all categories of user in terms of width and surfacing. An important factor is the proposed introduction of gates.
- 5.109 Guidance has been issued by Defra on '*Authorising Structures (gaps, gates and stiles) on rights of way - Good practice guidance for local authorities on compliance with the Equality Act 2010*'. It offers good practice on the way that disability discrimination legislation impacts on local authorities' functions in relation to gates, stiles, and other structures on public rights of way. It recognises that making it easier for people with disabilities to use rights of way have to be balanced against the operational needs of landowners.
- 5.110 In this instance it is uncontroversial that gates would be required at either end of the NB for land management purposes to contain livestock.
- 5.111 Where new structures are proposed the least restrictive option in terms of accessibility should be sought. Standards for structures can be based on designs such as those within British Standard BS5709:2018 ('BS5709').
- 5.112 BS5709 requires gates on public paths to meet the needs of the land manager to cause as little restriction as possible for all lawful users. That includes people of all ages and abilities, such as users of mobility vehicles and wheelchairs, along with people with pushchairs etc. and dogs. They are minimum standards. By specifying in the Order that gates must meet BS5709, it would not restrict the local highway authority in seeking higher standards or fetter the exercise of its discretion. Whilst Mr Tyrrell, did not think it correct to include provision with the Order, the DMS should record limitations, such as gates, and it would be standard practice to specify BS5709. In updating the DMS, details would be taken from the Order. Such provision would be compatible with discharging the PSED.

Inspector's conclusions on matter 4

- 5.113 Now that the proposed alignment has been revised as per APP07-2, there is no reason to believe that the Scheme would have any adverse impact on the use of agricultural vehicles.
- 5.114 A modification should be made to the draft Order to record in the DMS the provision of gates as a limitation that are compliant with British Standard 5709:2018.

Impact of withdrawal of permissive access and whether the footbridge would impact upon neighbouring land (matter 5)

Permissive access

- 5.115 Throughout the Inquiry process, NR referred to the provision of permissive access to be granted to pedestrians and demounted cyclists through Tackley railway station. Yet it vehemently opposes any formalisation or recording of that use, even in contextual terms. This resistance prompted me to query with Mr Lopez what certainty there would be of permissive access through the railway station without any written form of provision.
- 5.116 The Inquiry was told that NR having stated publicly that permissive use would be provided it would not renege on that statement. Criticism might well be levied at NR if it did renege, but its stated intention is no sound basis on which to make an evaluation of the Scheme. It can easily be appreciated why NR requires flexibility to react to any situation and to be able to close the permissive route immediately if circumstances dictate. Of course, written terms could have provided for this. The fact remains that the permission could be permanently withdrawn by NR at any time. I therefore invited submissions on the weight that could be attached to NR's intention to allow permissive access if no written provision exists.
- 5.117 In closing, Mr Lopez stated (INQ-31-1 NR, para 139) that NR will observe the creation of the permissive path through the placement of signage in and around the station, and at the end of the EB. These are, of course, all purely voluntary measures. Notably, Mr Lopez acknowledged (page 60 of INQ-31-1) that as such access (or its continued existence) would remain "technically discretionary", no weight should be given to the provision of the permissive path in relation to the legal tests in section 5(6) TWA or the other matters on which I must report. This appears to be a shift in NR's position given its earlier references to the ease of connectivity for pedestrians/cyclists between the same points via the permissive access and its insistence that there is commitment to provide such access.
- 5.118 Despite the acknowledgement above, NR still maintains (at page 60) that full weight should be given as part of the practical context bearing in mind the very high level of impetus on NR to provide permissive access. It strikes me that the practical context is rather meaningless if it does not assist on the matters of substance requiring consideration. The upshot is that the Order would create a cul-de-sac bridleway terminating to the east of Tackley station. This would not automatically render the EB redundant. It is feasible that the unaffected part could be used by rail users. It also offers some pleasant views and a route that could still be utilised by dog walkers and others on a recreational walk or ride.

- 5.119 In my view, no weight can be given to the provision of permissive access when it is, in fact, wholly discretionary. Even the extent of the permission is unclear as it is unrecorded in any way.
- 5.120 NR's argument on statutory incompatibility would be strongly persuasive as reason not to dedicate a formal public right of way through a railway station, but that is not the situation here. It does not explain the refusal to set out the basis for the permissive access in any form. Nevertheless, as NR now concedes that no weight attaches to the provision of the permissive access in terms of section 5(6) TWA and matters to be reported upon, there is no need to address the issue further.
- 5.121 Mr Peake fears that users unable to continue their onward journey through Tackley station from the EB may trespass upon other Tackley Estate land. I consider that any such risk could be reduced to acceptable levels through the provision of clear signage. The details of who should provide and maintain such signage and where it would be located would be a matter for determination between NR, OCC, and the landowner.

Impact upon neighbouring land

- 5.122 Even though the FB does not form part of the Scheme it does form an essential element to the overall solution that the Order seeks to achieve in closure of TLC. To that extent, the impact of the FB upon neighbouring land is a relevant consideration in the round. Concerns were expressed by Mr Ridout (OBJ-01), a neighbouring homeowner, about the possible effects on privacy from use of the FB. By the time of the Inquiry, these concerns had been overcome with the grant of prior approval formalising the location of the FB and the inclusion of screening to prevent overlooking.
- 5.123 Whilst Mr Ridout's other concerns over the FB lighting were not withdrawn, he acknowledged that sensitive low-level lighting should address his concerns, if that is what is provided. Mrs Bullock for NR explains in her POE (NR-W4-1, para 9.3) how the Lighting Impact Assessment (APP12.04) submitted with the prior approval application includes various design features to limit light spill or glare impact, such as light shields and light dimming when the station is not in use.
- 5.124 Mr Willson confirmed in oral evidence that there would be no lighting coming on at the station between the hours of 12.30 to 5am. Lighting activated by movement sensors would switch off after about 5 minutes. NR has already agreed to install a solid screen to the western steps and western end of the FB to shield against light intrusion.
- 5.125 Having analysed the potential impact on nearest residential properties, the Lighting Impact Assessment concludes (APP12.04, pages 91-92) that average luminance levels from the FB lighting can be considered of minimal effect. Further, the glare effect of the FB lighting can be considered 'not noticeable'.
- 5.126 The delegated report for the local planning authority confirms that Officers were satisfied that it had been demonstrated that light spill would not significantly result from the scheme (NR-W4-2, page 306).

- 5.127 Having received prior approval based on the submitted documents, there can be confidence that NR would install the type of lighting outlined.

Inspector's conclusions on matter 5

- 5.128 If permissive access were to be withdrawn, the impact would be low given that no weight, and thus no reliance, can be placed upon its provision in the first place in deciding the merits of the Scheme. The Order would create a cul-de-sac bridleway to the east of Tackley station from the outset.
- 5.129 Potential impacts upon neighbouring land have been addressed.

Whether compulsory purchase powers are justified (matter 6)

- 5.130 There has been a significant change in the draft Order (APP01-2). NR originally envisaged compulsorily acquiring the freehold interest in the land required to deliver the NB. That is no longer the case. The draft Order has now been amended to provide for the permanent acquisition of *rights* in the land to create the NB. For that reason, provision for the power to acquire land within paragraph 12 of Part 3 of the draft Order has been deleted along with all references to the application of the Compulsory Purchase (Vesting Declarations) Act 1981.
- 5.131 References to the application of the Compulsory Purchase Act 1965 are removed from Part 3 concerning the acquisition of land. Instead, it is explicitly stated that the Order does not include powers for the compulsory purchase of land to which the Acquisition of Land Act 1981 applies.
- 5.132 The revised draft Order (article 8) provides for the extinguishment of all rights of way over TLC, but not before the replacement right of way (i.e. the NB) has been provided to the reasonable satisfaction of OCC and is open for use.
- 5.133 Article 9(3) of the draft Order provides for compensation for loss caused by the NB to be payable as if a new highway was created under a public path creation order. Section 28 of the Highways Act 1980 would have effect for these purposes (by virtue of article 9(2)) albeit this would not be a public path creation order made under section 26 of the 1980 Act. In this way, the Order would provide the mechanism to enable compensation to be claimed. Any claim would need to be submitted to NR within 6 months of the date of public rights of way first becoming exercisable. Any disputes as to compensation would be determinable by the Upper Tribunal (Lands Chamber) (as per article 9(8)).
- 5.134 There are outstanding objections from two freehold owners affected by the draft Order: (i) Mr Peake (OBJ70) and (ii) Anthony Crocker (OBJ-62)/Janina Pulaski. Five other objectors have rights of access or rights under a transfer, being: Guy Roberts (OBJ-08), Helen Spencer (OBJ-49), Jane Collier (OBJ-56), Kay Chacksfield (OBJ-61) and Gillian Withers (OBJ-66) (see NR-W3-1, para 9.3).
- 5.135 To deliver the NB requires the acquisition of public rights of way in the land shown on plan INQ-04-1, being a small triangular shaped parcel of land owned by Mr Crocker and Ms Pulaski (plot 5), and land belonging to Mr Peake over the remainder of the NB (plots 6, 8 and 10).
- 5.136 Temporary possession would be required over land shown on plan INQ-04-2. A short strip (plot 4) forms part of an existing footpath over land belonging to

Mr Crocker and Ms Pulaski that would be required for temporary access and construction of the NB. Otherwise, it is mainly Mr Peake's land that would be affected during construction works. Plots 3, 3a, 3b, 11 and 12 would be used for worksite access, construction compound and delivery of materials. Temporary access would also be required over plot 7. The largest areas affected would be plot 9 next to the NB and plot 1 covering an area next to the railway station. These two plots would be used as construction compounds, laydown and storage, site offices and accommodation facilities, together with access.

- 5.137 At the time of the Inquiry, verbal agreement had been reached with Mr Crocker and Ms Pulaski and documentation was in progress. Agreement had not been reached with Mr Peake, but dialogue was ongoing. Details of those negotiations are subject to commercial sensitivity and are outside the scope of this Report.
- 5.138 Nigel Billingsley (chartered surveyor) is engaged by NR to undertake land agency services in relation to TLC closure, including compulsory purchase and TWAO matters. He provided updates to his POE (NR-W3-1) to explain why NR changed its position to seek rights for the creation of a new highway rather than the permanent acquisition of land. The change arose because of the obligation to take the minimum land required to fulfil the project, not just in area, but in scope e.g., whether temporary use or creation of rights sufficed. Following discussion with OCC it was realised that the local highway authority did not need to take a transfer of the land on which the NB sits to deliver a public bridleway.
- 5.139 The Government '*Guidance on Compulsory purchase process and The Crichel Down Rules*' (APP41) dated July 2019 was recently updated and replaced by '*Guidance on the Compulsory Purchase Process*' published in October 2024. As before, the latest Guidance explains (at page 147) that it is possible to compulsorily acquire rights and other interests over land, without acquiring full land ownership. The creation of new rights can only be achieved using a specific statutory enabling power.
- 5.140 The draft Order is expressed to be made by the SoS in exercise of powers conferred by sections 1 and 5 TWA and paragraphs 1 to 5, 7, 8 10, 11, 16 and 17. Section 1(2) enables the SoS to make an order relating to, or to matters ancillary to, the construction or operation of a transport system. Under section 5, the matters as to which provision may be made by an order under section 1, includes those set out in Schedule 1. Paragraph 4 of Schedule 1 of TWA provides for the "creation and extinguishment of rights over land (including rights of navigation over water), whether compulsorily or by agreement." Paragraph 11 provides for the payment of compensation.
- 5.141 Given that an alternative bridleway is required by section 5(6) TWA, I am satisfied provision exists for the Order to be made by statutory instrument for the creation of rights over land compulsorily to deliver the NB (or an alternative).
- 5.142 Notwithstanding that there would be no compulsory purchase of the freehold, there would (in the absence of agreement) be the compulsory acquisition of interests in land in order to designate the NB as a public right of way, which patently affects its use. The creation of interests in land gives rise to similar issues in terms of human rights and the approach to decision making.

- 5.143 In terms of the temporary possession of land, NR has clearly identified the land required and specific purpose. The Scheme could not be delivered without facilitating the construction process for the FB and NB. Article 16(4) of the draft Order requires NR to remove works and restore the land that has been subject to temporary possession, with compensation payable to the landowner for any loss or damage caused (article 16(5)).
- 5.144 In deciding whether to confirm the Order the SoS should take a balanced view between the intentions of NR and the concerns of those with an interest in the land affected and the wider public interest.
- 5.145 Mr Peake would prefer that the required land within his ownership be subject to CPO so that he is divested of all responsibility. As it would not be necessary to acquire the freehold interest to dedicate a new bridleway as a public right of way, it would not be a proportionate response.
- 5.146 Mr Billingsley referred to Routes D and E as being longer. It was thought that Route D would make the land more difficult to farm and take away options to move animals around. That stance is apparently not now shared by Mr Peake. Nevertheless, an alternative bridleway is needed. The only realistic options involve land owned by Tackley Estate. No more land than necessary would be utilised in the creation of the NB, or indeed Route D.

Inspector's conclusions on matter 6

- 5.147 I conclude 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 (SoM 6a). All the land and rights over land which NR has applied for is necessary to implement the Scheme, including the creation of a new public bridleway (SoM 6d). Moreover, 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 sought, having regard to the Human Rights Act 1998 (SoM 6b). There are no identified impediments to delivery of the Scheme if the Order is made (SoM 6c).

Any other important and relevant matters (matter 7)

- 5.148 No other matters of importance were identified by NR.
- 5.149 Concerns were raised on Mr Peake's behalf over maintenance costs of the fencing for the NB. Under article 9(1) of the draft Order, any boundary structures would be maintained by, and at the expense of the relevant adjoining landowner, after the initial 12-month period of establishment. For the NB, that would mean NR having responsibility for the railside fence and Tackley Estate the other side. Mr Willson explained (para 5.7 POE (NR-W5-1)) that the fence specification to the field/bridleway boundary can be specified to suit Tackley Estate. It could be changed to boundary post markers in place of the fence subject to Tackley Estate's permission, to provide more space. With Route D, the landowner would be responsible for the fencing on both sides of the bridleway as NR would not be an adjoining landowner. It is anticipated that future maintenance costs of fencing would be factored into the landowner's compensation payment.

- 5.150 In terms of Mr Peake's concerns over 'occupiers' liability', the risks appear no different from those for a new bridleway along Route D, the route Mr Peake prefers. The issue arises because NR no longer seeks to acquire the freehold interest in the land required for a new bridleway.
- 5.151 Mr Carr raised the possibility that adjoining residential landowners may have private vehicular rights over the 60m stretch. If so, they could commit a criminal offence by driving over the NB. The draft Order had originally sought to remove all private rights over the land subject to compulsory acquisition. An article from The Rights of Way Law Review (INQ-24-2, page 3) reports that the fact a way is recorded as a public footpath or bridleway does not mean that it cannot be subject to a private vehicular right. Indeed, anyone with private vehicular rights over the 60m stretch would presumably be exercising those rights already as it is an existing public footpath.
- 5.152 The latest draft Order adds a new article 6(8) within Part 2 to record that the redesignation of the footpath as a bridleway does not affect any private rights for vehicular access lawfully enjoyed at the date the Order comes into effect. Article 19 which had provided for the extinction or suspension of private rights of way has been deleted. These revisions eliminate any tensions between the Order and the exercise of any private rights.

6. Overall Conclusions

- 6.1 There is a compelling case on safety grounds to close TLC and extinguish the bridleway thereover. On the available evidence, there is no basis to conclude otherwise. The SoS can be satisfied of all matters within the SoM except SoM 3 concerning safety implications of use of the NB with horses.
- 6.2 Under section 5(6)(a) TWA a TWAO cannot be confirmed to extinguish an existing public right of way unless the SoS is satisfied that an alternative right of way will be provided. That alternative should be suitable and convenient.
- 6.3 An alternative bridleway is required to replace the existing section of public bridleway currently running across TLC. That is so irrespective of the anticipated level of equestrian use being relatively low, based on surveyed usage of TLC.
- 6.4 All the viable options involve a longer route than the short stretch of EB across TLC. As the EB appears to be predominantly used for recreational purposes, the additional distance to connect between the same points is unlikely to be inconvenient for those walking, cycling, or riding for leisure.
- 6.5 It is significant that NR's own equestrian expert accepts that an inexperienced rider could use the EB across TLC under supervision, but not the NB [4.55]. From the expert evidence before the Inquiry, the NB would only be safe for experienced riders on horses familiarised with trains. It follows that those falling outside that category of equestrian user would be excluded from its use. This leads to the conclusion that the NB is not a convenient and suitable replacement bridleway for existing users who used the section of EB across TLC.
- 6.6 Route D still utilises the 60m stretch beside the railway where the existing public footpath would be upgraded to bridleway status. Thus, it is not entirely free from risk for all equestrians, but nor was the EB over TLC. It is a relatively short

section, which BHS is satisfied is acceptable for equestrian use. Significantly and unlike the NB, the remainder of a bridleway along Route D would be removed from the proximity of the railway line. Safety risks from equestrian use would be reduced. Route D would, in my view, be both suitable and convenient.

- 6.7 Notably, NR favoured Route D until encountering the demands of Mr Peake. Those same demands persist: (i) to lower and improve the track beneath the underpass and (ii) to extinguish the EB on Mr Peake's land upon any revocation by NR of the permissive route. Those demands do not directly involve the Scheme. They are points of contention that have thwarted negotiations for both routes. Thus, it is incomprehensible how NR can assert "*the certain fact [is] that Route D (and other alternative routes within TE) cannot, and will not, come forward*" (INQ-31-1, para 124a)). The reality is that a TWAO providing for Route D could be made in the same way that the draft Order for the NB is presented. Route D is no less deliverable than the proposed NB.
- 6.8 No concerns are now pursued by Mr Peake about Route D splitting his agricultural fields to the detriment of farming operations. In any event, I observed at the site visit that there is a natural division in the field created by a treeline. This can easily be seen in the aerial images appended to Mr Audley's POE (NR-W2-2 [JA3 and JA4]). Suggested Route D would extend beside the treeline. It is difficult to see how a fenced bridleway would introduce a field division when division of a different kind already exists. Whereas the field immediately to the west of the railway is cultivated, the field behind the treeline (lying close to the stream and susceptible to flood) is not.
- 6.9 Mr Peake's desire for the EB to be extinguished if permissive access through the station is revoked, is not achievable through this process. It is a matter governed by separate statute. OCC, as local highway authority, does not currently agree to the EB to the east of the railway line being stopped-up. Indeed, OCC could only exercise its discretion to make a public path extinguishment order under section 118 of the Highways Act 1980 if it considers it expedient for the EB to be stopped up on the ground that the EB is not needed for public use.
- 6.10 BHS suggests that it would be content for the EB to be extinguished if Route D was achieved. That sentiment is unsurprising given that the EB would become a cul-de-sac route once TLC is closed. With TLC gone, horse riders would need to retrace their steps upon reaching the station. Walkers and dismounted cyclists could continue their journey through the station if permissive access is available. The fact a cul-de-sac route would be left in consequence of the Order weighs against the Scheme but is unavoidable if TLC is to be permanently closed as it must. There is reasoned justification to conclude that an equestrian subway or bridge would not be economically viable and there would also be other constraints, including engineering and environmental issues.
- 6.11 Whether there would be a case in the future for the closure of the whole EB is outside the scope of this Report.
- 6.12 Another consideration is the enjoyment factor. Traversing TLC along the section of EB cannot have been enjoyable for anyone. However, it was only a very short distance before continuing through the fields away from the railway along the EB. For equestrians, the NB involves riding near to the busy railway line for some considerable distance with heightened risk of the horse behaving

unpredictably along a fenced corridor. That alone would be likely to affect a rider's enjoyment for the duration of their passage. As NR's expert equestrian witness agreed, Route D would be more enjoyable than the NB [5.95]. It may be anticipated that other users on a recreational walk or cycle ride would similarly enjoy the more rural experience offered by Route D. This further consideration adds weight to the case in favour of Route D.

- 6.13 On the basis that it has not been demonstrated that the NB would be a suitable and convenient alternative to the EB across TLC for equestrian users on safety grounds, I conclude that the Order should not be made as drafted but proposed for modification with a revised alignment for the NB along Route D instead.
- 6.14 Part of Route D would involve upgrading an existing field edge public footpath to a bridleway. The public footpath lies close to the boundary of residential properties in Lime Kiln Road on land owned by Ede Holdings Limited (see APP06, pages 25 and 27). NR consulted this company on the proposed Scheme in 2023. It responded requesting an electronic copy of the 'Request for Information' form but did not reply further (APP05-1, para 6.5).
- 6.15 At 4m in width, a bridleway is expected to be wider than the existing public footpath. Depending on precise measurements, the north-western section of Route D may also encompass a strip of Mr Peake's land as well as the remainder of the route proceeding south.

7. RECOMMENDATIONS

- 7.1 The powers of the SoS within section 13(1) TWA are either: (a) to make an order to give effect to the proposals without modifications, (b) to make an order which gives effect to those proposals with modifications, or (c) not to make an order.
- 7.2 Both BHS and NR agree that the SoS can modify the Order to deliver Route D as the alternative right of way under section 5(6) TWA. I agree. It would be a substantial change in the proposals. Therefore, any person likely to be affected by the modifications would need to be given opportunity to make representations and their representations considered by the SoS in line with section 13(4) TWA. The SoS can then decide whether to make the Order with the modifications under section 13(1)(b). It would remain open to the SoS to make the Order without modifications or not to make the Order.
- 7.3 I recommend that:-
- 7.3.1 The Order, as submitted and revised, is not made.
- 7.3.2 The SoS 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, and (ii) to record the position of gates along the route to British Standard BS5709:2018.
- 7.3.3 The proposed modifications are consulted upon, and any representations considered before deciding whether to make the Order with the modifications.
- 7.4 The extent of modifications required would be:
- In Schedule 3, under the new heading of "LIMITATIONS AND CONDITIONS" insert "A gate at point [X] and [Y] to BS5709:2018", and

- A revised plan to show Route D and with the position of the gates marked thereon.
- 7.5 Should the SoS be minded not to propose modifications for Route D, but to make the Order as submitted and revised, I recommend it is subject to the modification as set out in the first bullet point in paragraph 7.4 above to record the gates as a limitation. This would not be a substantial change requiring further consultation.
- 7.6 In either scenario, it will be necessary to request NR to provide a modified draft Order and revised Land Plans reflecting the SoS' decision.

K R Seward

INSPECTOR

APPENDIX A

APPEARANCES AT THE INQUIRY

For Network Rail (the applicant):

Juan Lopez	Counsel
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Who called:

Anna Holbrook	Industry Programme Director (Network Rail)
James Audley	Liability Negotiations Advisor (Network Rail)
Charlie Lane	Equestrian Consultant
Andy Willson	Project Delivery Engineering Manager (Network Rail)
Lisa Bullock	Senior Town Planner (Network Rail)
Nigel Billingsley, RICS	Surveyor, Bruton Knowles, consultants
Ian Aston	Route Level Crossing Manager (Network Rail)
Jerry Greenwood	Head of Infrastructure and Liability (Network Rail)

In objection:

- Alexandra Machin Local equestrian and Secretary of Bicester & Warden Hill Pony Club
- Robin Carr Advocate for The British Horse Society

Who called:

- | | |
|---------------|--|
| Sue Eeley | Local equestrian |
| Jo Hales | Equine Vet |
| Jin Langstone | Equine Behaviourist |
| Will Steel | Head of Access (The British Horse Society) |
- Councillor Sue Lygo Tackley Parish Council
 - June Collier On behalf of Tackley Parish Council and herself
 - Malcolm Ridout Local resident
 - Hywel Morse Land agent on behalf of Andrew Peake, landowner

Others who spoke:

- Sarah Aldous Technical Lead Countryside & Access, Oxfordshire
County Council (order modifications session)

APPENDIX B

MAIN CONCLUSIONS on each matter within the Statement of Matters

Matter (as listed in paragraph 1.31)	Paragraphs of this Report
SoM1	5.18, 5.25, 5.31, 5.32, 6.1
SoM2	5.18, 5.49, 5.50, 6.1
SoM3	5.83, 5.102, 6.5
SoM4(a)	5.113
SoM4(b)	5.114
SoM5	5.128, 5.129
SoM6(a)-(d)	5.147
SoM7	5.149 to 5.1.52

APPENDIX C

DOCUMENTS submitted at the Inquiry

INQ-01	Network Rail Opening Statement
INQ-02	British Horse Society (BHS) Opening Statement
INQ-03	Tackley Parish Council Opening Statement
INQ-04-1	Plan showing plots to be permanently acquired
INQ-04-2	Plan showing plots to be temporarily acquired
INQ-05	Note regarding timings for use of Existing and New Bridleway Route
INQ-06	Note from Network Rail re date of New Bridleway Route Selection and discontinuance of subway
INQ-07	NR Note Addressing Authenticity of Videos appended to the Proof of Evidence of Charles Lane
INQ-08	NR Note regarding Road Traffic Act 1988, Bridleway Maintenance and Permissive Path Agreement
INQ-09	The Town & Country Planning (General Permitted Development) (England) Order 2015 (Part 4 of Schedule 2)
INQ-10-1	Tackley Accompanied Site Visit (21 June 24) Route Plan
INQ-10-2	Tackley Accompanied Site Visit (21 June 24) Itinerary
INQ-11	Updated Proof of Evidence for Sue Eeley (OBJ-60 BHS)
INQ-12	Tackley Area OS Map in conjunction with Jo Hales Evidence (OBJ-60 BHS)
INQ-13	June Collier Statement on behalf of OBJ-63 Tackley Parish Council
INQ-14	NR Submission on British Horse Society published Advice Notes
INQ-15	Office of Rail Regulation: Disabled People's Protection Policies – A regulatory statement (July 2014)
INQ-16	Extracts from Design Standards for Accessible Railway Stations (Version 04 – Valid from 20 March 2015)
INQ-17	Extracts from Accessible Travel Policy Guidance for Train and Station Operators (September 2020 edition) (includes March 2021 clarification)

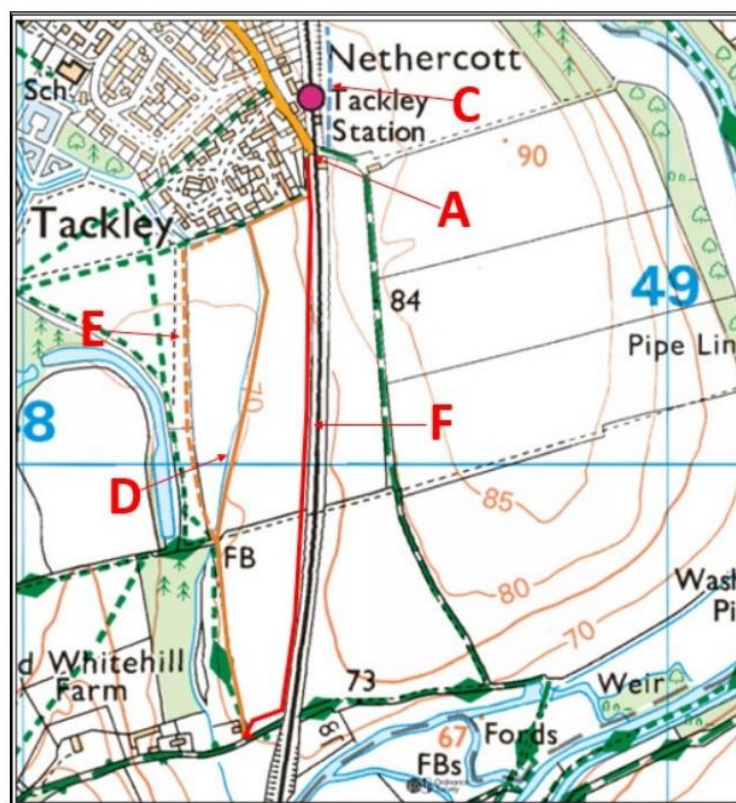
INQ-18	NR Note regarding issues raised in relation to Plot 10
INQ19	Note Regarding Circular Riding Routes Within Proximity to Tackley
INQ-20	Note of Response by Charlie Lane to Sue Eeley - Additional Points
INQ-21	BHS Response to INQ19 - Note regarding circular riding routes within proximity to Tackley Village
INQ-22	Alex Machin response to the maps submitted by NR
INQ-23	BHS Response to INQ20
INQ-24-1	BHS Inquiry Note
INQ-24-2	RWLR Article
INQ-24-3	Extract from the Encyclopaedia of Highways Law and Practice
INQ-25	TPC Closing
INQ-26	Illustrative Tackley Estate field gateway proposals
INQ-27	Written evaluation of alternatives proposed - paragraph 12.3 of the Inspector's PIM Note
INQ-28	Closing Statement for Alex Machin
INQ-29	Closing Statement for BHS
INQ-30	Closing Statement for Tackley Estate
INQ-31	Closing Statement for NR
INQ-31-1	Updated Closing Statement for NR including corrections and additions made orally

APPENDIX D

Indicative Plans showing route options

Option	Description	Line style
A	An underpass at the crossing	Marked A on plan
B	The “Developer” bridge north of the station where the line is in a cutting,
C	A bridleway north from the east side of the crossing, between the railway and River Cherwell, to the bridleway bridge at SP 4834 2171	-----
D	A bridleway west of the railway on the current ‘permissive route’	————
E	A bridleway west of the railway – the ‘Western infield route’ (same as D in southern field)	-----
F	Network Rail’s preferred Lineside route	————

Plan 1 – South



APPENDIX E

