

TRANSPORT AND WORKS ACT 1992

THE NETWORK RAIL (CAMBRIDGESHIRE LEVEL CROSSING REDUCTION) ORDER (“THE ORDER”)

NOTES ON FILLED-UP ORDER

20 February 2018

Background

Network Rail’s application draft Order provided for the closure of a total of 30 level crossings within Cambridgeshire. As explained below, a total of 5 crossings have been withdrawn from the Order and Network Rail has amended certain provisions of the draft Order to reflect this.

Other amendments to the draft Order have been made as a result of negotiations; in particular, with Cambridgeshire County Council which is the strategic highway authority with responsibility for the public right of way and highway network in Cambridgeshire and an objector to the application.

Changes were made to the content of Schedule 16 (protective provisions for drainage authorities and the Environment Agency) following discussions with the Environment Agency.

As a result of legislative changes made to compensation enactments by the Housing and Planning Act 2016, various technical changes have been made to the draft Order. Further, former article 26 (set-off for enhancement in value of retained land) has been deleted following the coming into force in September 2017 of section 32 (no-scheme principle) of the Neighbourhood Planning Act 2017, which amended the Land Compensation Act 1961 and thereby rendered the article redundant.

Corrections have been made where necessary to remove typos and extraneous text.

Consequential amendments on withdrawal of certain crossings

Prior to submission of the application, Network Rail determined that further consultation was required in respect of its proposals for crossing number C18 Munceys, and it was decided to remove this from the scope of the Order. This was drawn to the attention of the Secretary of State before the application was made, and was referred to in the application letter dated 14 March. It was also publicised on site notices and by letter to relevant landowners.

Subsequently, and in light of issues with service of landowner notices that came to light during the first week of the public Inquiry into the proposed Network Rail (Essex Level Crossing Reduction) Order, Network Rail commissioned an audit of the land referencing carried out for the Cambridgeshire project. As a result of this, a decision was taken to request the Secretary of State to remove four further crossings from the scope of the Order, namely: C03 West River Bridge, C08 Ely North Junction, C09 (Second Drove) and C13 (Middle Drove).

The Filled Order submitted with this Note includes changes to the detail of articles 4 and 29 and to the content of Schedules 2, 4, 5, 6, 7, 9 and 11 that arise as a result of the withdrawal of the crossings from the Order.

Amendments arising as a result of negotiations with Cambridgeshire County Council

Minor amendments for consistency with Consolidated Map

At the behest of Cambridge County Council some minor changes were made to sheets 5, 6, 7, 9, 10, 19, 28, 33, 34, 35 and 36 of the Order plans merely to ensure consistency with the Council's 2016 Consolidated Definitive Map. As a result of these minor changes, it was necessary to correct some references to "P" points in the Schedules 2 and 11 to the draft Order. Other changes to the plans have also been made but do not affect the content of the draft Order.

C28 Black Horse Drove

Article 15 authorises the permanent stopping up of crossing C28 Black Horse Drove and the extinguishment of all rights over the crossing, including any right of way. Article 15 originally referred to crossings described in Part 2 of Schedule 2 to the Order. However, as there is only one crossing within this category, the article has been amended to refer directly to C28 Black Horse Drove and the title of the article has been changed.

The second part of Schedule 2 has been deleted as the body of article 15 now includes all the relevant information that was formerly in the second part of the Schedule to the Order. This makes it clear that the extinguishment of rights over the Black Horse Drove crossing is subject to the continued use by vehicular traffic by persons authorised by Network Rail.

Further, following negotiations with Cambridgeshire County Council and input on behalf of the South Yorkshire Pensions Authority, article 15 has been amended. The text, which has precedent in a TWAO context in the Railtrack (Swinedyke Level Crossing) Order 1995 (SI 1995/3188) will ensure that any downgrading of the highway to the west of the level crossing by operation of law (i.e. as a result of the extinguishment of public rights of way over the crossing) does not affect the rights of passage of owners and occupiers of property to the west of the railway for whom Black Horse Drove is their only link to the rest of the highway network. In an extension to the precedent, and to provide certainty for residents, explicit provision has been made for section 10 of the Compulsory Purchase Act 1965 (further provision as to compensation for injurious affection) to apply in respect of any land or any interest in land which has been injuriously affected by the stopping up and discontinuance of the level crossing or by the cessation of public rights of access along Black Horse Drove to the west of the crossing.

Amendments to Schedule 15

As a result of negotiations with Cambridgeshire County Council and in response to OBJ/7 (Mr B. Harris), the word "motor" has been deleted from column (3) of the table in Schedule 15 (prohibition of vehicular traffic). Article 32 (traffic regulation) provides for Network Rail to prohibit vehicular access in the manner specified in Schedule 15 to the extent specified in column 3 of that Schedule. In this case, the prohibitions relate to the dimensions of vehicles and not to whether they are motorised.

Changes arising as a result of the Housing and Planning Act 2016

The Housing and Planning Act 2016 ("the 2016 Act") came into force at a time when Network Rail's proposals were emerging. It is only since the draft Order was submitted that the first TWAOs have been made that indicate how the Department for Transport wishes promoters of TWAOs to address the modifications made to compulsory purchase legislation as a result of that Act. The amendments made to this draft reflect, in particular, the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017/1150) but depart from this precedent in some instances. Some amendments made previously to the application draft Order have had to be deleted because it has since become apparent that such modifications are unacceptable to the Department.

Article 20 (Application of Part 1 of the 1965 Act)

The 2016 Act added a new section 4A to the Compulsory Purchase Act 1965 ('the 1965 Act') concerning the extension of the time limit for exercise of compulsory purchase powers and acquisition where a challenge has been made to the High Court in respect of a compulsory purchase order. The draft Order has been revised to incorporate this provision of the 1965 Act, with the necessary modifications to account for the Order being made under the Transport and Works Act 1992 rather than the Compulsory Purchase Act 1965.

Article 20 also modifies the new Schedule 2A to the 1965 Act dealing with acquiring part only of land to make clear how that applies in relation to the powers of the Order, reflecting the model of the High Speed Two (London – West Midlands) Act 2017 (c.7) and the practice in recent draft TWAOs.

Article 21 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

The draft Order has been revised to make consequential changes to section 5B of the 1981 Act as amended by the 2017 Act to maintain consistency with other provisions of the Order. Again these provisions reflect the practice in other recent draft TWA orders.

Schedule 14 (Modification of compensation and compulsory purchase enactments for creation of new rights)

This Schedule has been amended in the light of recently made TWAOs. In particular, the modifications of section 44 of the Land Compensation Act 1973 that had precedent in High Speed Two have not been accepted by the Department in the context of TWAOs and an alternative approach is now adopted consistent with the Buxton Sidings Order.

Temporary possession and use of land

As well as the amendments reflecting the removal of certain crossings from the draft Order, minor amendments have been made to schedule 7 to remove highway plots (the reason being that Network Rail's powers to carry out works within the highway are not derived from powers of temporary possession) or to more accurately describe the use of particular land parcels.

Schedule 16 (Protection of drainage authorities and the Environment Agency)

As explained in Network Rails note (NR- INQ- 22), Network Rail and the Environment Agency have been engaged in negotiations for some time with a view to agreeing a set of standard protective provisions. The draft Order now reflects the changes agreed between the parties as at 19 December 2017.

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