

Network Rail Infrastructure Limited

Proposed Network Rail (Essex and Others Level Crossing Reduction) Order

Note on minor amendments to the draft Order and Plans.

- 1 Network Rail has been in discussion with a number of objectors about the proposed route of the new public rights of way (prow) to be created through the Order on their land. Under the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, rule 10 (5) requires that an application which provides for extinguishment or diversion of prow over a footpath, bridleway, cycle track or byway shall provide a map on which the extinguishment and any new path is clearly delineated. The TW Order plans include only as much land around the proposed path as is required to be occupied temporarily in order to create the new path, which is identified in the Order by reference to numbered points. As these prow are not scheduled works under the Order, they do not have limits of deviation and the line shown on the plan is therefore taken to be the line on which the path must be created. For these reasons the Order and plans do not within themselves include land to allow for changes to the proposed diversion routes to be made.
- 2 The Guide to TWA Procedures at paragraphs 3.48 to 3.51 sets out the position on the approach to additions and amendments to documents post-application, noting that as a result of discussions with objectors, an applicant may wish to amend documents previously submitted, including the Order (and by extension the Order plans) without the need for a further application. The Guide continues, in that paragraph, to identify the circumstances in which the Secretary of State would be prepared to accept for consideration additions or amendments.
- 3 The circumstances are, where the Secretary of State is satisfied that:
 - (a) the modifications do not contain (expressly or by implication) a proposal to authorise compulsory purchase of land, or a right to use land, or compulsory extinguishment of easements or other private rights over land which was not included in the application;
 - (b) the modifications would not change the essential nature of the proposal submitted so as to amount to a substantially different proposal; and
 - (c) the interests of other parties would not be prejudiced by acceptance of the amendments (taking into account what opportunity to comment had been given to parties who might have an interest.
- 4 Paragraph 3.49 states that “Before submitting an additional or amending document, applicants may wish to consult with the Orders Unit on whether the Secretary of State would be likely to accept such a document.” Having had regard to the relevant paragraphs of the Guide and experience of the handling of minor amendments to TWA Orders in the past, Network Rail through Winckworth Sherwood consulted the Orders Unit about potential changes to Order plans by email on 1 September in the following terms:

“Bearing in mind Guidance on TWA Procedures for amendments to documentation post application, what is proposed is only a minor adjustment of the route of a prow across the existing landowner’s land where the landowner has agreed to the change, for instance to avoid some feature on the ground or usage of the land in question. The proposed changes would not therefore extend the compulsory powers in the Order over land or for rights in land except with the landowner’s agreement, and the changes envisaged are not thought to substantively change the proposed diversionary route to provide a different proposal.

Network Rail proposes that the changes would be sufficiently minor so as not to require re-advertisement of the amendments and a further formal objection period, but so that the interests of other parties are not prejudiced, it proposes that where such changes are agreed with the landowners, it would write to explain the proposed changes in the Order and the plans to any existing objectors to the diversionary route/crossing closure and, ask for them to submit any comments they may have via the programme officer by an agreed date.

Therefore any objector with an in-principle objection to the form or route of the proposed prow would be made aware of the minor adjustments to the proposed prow and would have the opportunity to confirm whether or not their objection remained.

Please could you confirm if the Secretary of State would be content with this approach to proposed minor adjustments to the Order and plans. If this approach is acceptable, Network Rail would then submit an amended Order and plans to reflect the agreed changes at the start of the inquiry.”

- 5 The TWA Orders Unit responded to confirm by email that day that Network Rail’s amendments would be sufficiently minor as not to require readvertisement and a further formal objection period. The Unit also agreed with the proposed approach to “write to landowners to explain the proposed changes and give an opportunity to confirm whether or not their objection remains”. Their reference to “landowners” was taken to mean “objectors”, in line with Network Rail’s proposed approach.
- 6 Network Rail considered further the position when preparing amended plans for the first proposed amendment and considered that, in addition to notifying objectors to particular crossings of particular proposed amendments, so as not to prejudice other parties with an interest in or representing users of the prow network and appearing at the inquiry, it should also notify the Highway Authority, Essex County Council, the Ramblers and Essex Local Access Forum (ELAF).
- 7 To date, therefore, in line with the Orders Unit approval, having agreed the amended route with the landowner (and confirming that the landowner owns all the necessary land) Network Rail has written to individual objectors, ECC, the Ramblers and ELAF in relation to minor amendments to the routes related to three different crossings (although in one case there are two amendments to the route relating to one crossing). These parties have been asked to provide comments to the Programme Officer on the proposed changes as shown on a draft plan within two weeks of the date of the letter. The deadlines for the comments fall due within the first two weeks of the public inquiry,

- 8 Negotiations continue in relation to a further three minor amendments to the proposed new prowl related to three other crossing closures. Network Rail had expected to follow the same procedure for these remaining crossings. However, during the first day of the public inquiry on 18 October 2017 the Inspector raised the question of publicising the changes as widely as possible, and during exchanges the Ramblers suggested that the quality of the plans received was not clear.
- 9 Network Rail is conscious that now the Inquiry has started it is (in accordance with paragraph 3.50 of the Guide to TWA Procedures) for the Inspector to decide whether to allow submission of new material and how parties to the inquiry are to be given opportunity to consider the documentation. However, given the approach agreed with the Orders Unit (and extended to cover other relevant parties) has already been implemented and is underway in relation to the proposals for three crossings, in order to publicise the proposed minor amendments, and to assist the Inspector and inquiry Network Rail will put the draft amended plans for proposed amendments which have already been submitted to interested parties for comment onto the Network Rail website on Friday 20 November allowing all parties to the inquiry (and any others who view the website) an opportunity to comment within two weeks. Any new amendments to plans will be uploaded to Network Rail's website during next week and, and at the same time, Network Rail will also write to notify all parties who have objected to the prowl proposals at a relevant crossing and ECC, the Ramblers and ELAF. It is suggested an announcement is made at the start of inquiry proceedings once the material is available on the website and the Programme officer puts a note on the inquiry website to alert parties to the information and deadline.
- 10 Network Rail would then consider any comments made and, in light of those comments, decide whether to formally submit the changes to the inquiry along with a revised draft Order to reflect any amendments to points marked on the Order plans. It would invite the inspector to substitute the relevant original sheet of the Order Plans with the revised plan and revised Order and propose that the Secretary of State consider that amended route in deciding whether or not to make the Order before evidence in relation to the proposals for that crossing is heard. Any party with any concerns on the revised proposals would be able to present those as part of their evidence in relation to that crossing.

Winckworth Sherwood

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