

TRANSPORT AND WORKS ACT 1992

THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER ("THE ORDER") INQUIRY

NOTE ON FILLED-UP ORDER DATED 2.10.18

1 Background

- 1.1 Network Rail's application draft Order provided for the closure, downgrade or redesignation of a total of 61 level crossings within Essex, Hertfordshire, Southend on Sea, Thurrock, and London Borough of Havering.
- 1.2 On Day One of the Inquiry Network Rail submitted a Filled-up Order (FUO) dated 18.10.17 (**NR-101**). The changes contained in that Order were referred to by Network Rail's counsel on Day One, which are as follows:
- (a) the withdrawal of the proposals for crossings E42 Sandpit and E57 Wivenhoe Park and consequential amendments;
 - (b) Removal of plot 1 in the Parish of Bishop's Stortford, County of Hertfordshire [E08 Johnsons] and consequential amendments including removal of former article 18 (power to acquire land) and former Schedule 5 and cross-references to it (article 5(5));
 - (c) Amendment to article 33 and Schedule 13 (protective provisions for drainage boards and the Environment Agency) to reflect discussions with the Environment Agency; and
 - (d) Correction of certain typographical errors / cross references.
- 1.4 This latest version of the FUO (dated 2.10.18) contains the following further amendments:
- (a) Amendments to articles 18-20 and related Schedules, in light of changes to the compulsory purchase legislation contained within the Housing and Planning Act 2016, to reflect the provisions contained within the Network Rail (Buxton Sidings Extension) Order 2017/1150;
 - (b) deletion of former article 25 (set off for enhancement in value of land), due to amendments in the Neighbourhood Planning Act 2017 to the Land Compensation Act 1961 which have come into force rendering the article redundant (and any consequential changes to cross-referencing of articles);
 - (c) Article 15 (creation and maintenance of new highway) has been amended so that the start date for the six-month claim period for compensation as a result of a new public right of way coming into use runs for six months from the date of the new right of way is brought into operation;
 - (d) removal of crossing H03 Slipe Lane from the Order;
 - (e) Changes as a result of the change in P points on the Order plans, due to the projection issue referred to on Day 4;

- (f) changes to the proposed alternative routes as a result of discussions with landowners;
- (g) a change in the explanatory Note to the Order as to the location for public inspection of the Order Plans and Book of Reference referred to in the Order, and
- (h) other minor corrections to cross-references and typographical errors.

1.5 Further explanation on these amendments is contained in section 2.

2 Changes to Filled-Up Order

Consequential amendments on withdrawal of certain crossings and plots

2.1 Prior to the start of the inquiry in 2017 Network Rail withdrew its proposals for two crossings, E42 Sand Pit and E57 Wivenhoe Park. The resulting changes to the Order are therefore as follows:

E42 Sand Pit

Network Rail has withdrawn this crossing in its entirety from the draft Order. Consequential amendments are shown in deletions in what is in the 2.10.18 FVO article 29, and for the Borough of Colchester, Parish of Wivenhoe and District of Tendring, Parishes of Elmstead and Alresford in Schedule 2, Part 1, Schedule 5, Schedule 6, Schedule 8, and Schedule 9.

E57 Wivenhoe Park

Network Rail has withdrawn this crossing in its entirety from the draft Order. Consequential amendments are shown in deletions in what are in the 2.10.18 FVO article 25(2)(c), and for sheet 42 in Schedule 3, and for the Borough of Colchester, Parish of Wivenhoe in Schedule 5, Schedule 6, and Schedule 9.

2.2 Network Rail reached agreement prior to the start of the inquiry in October 2017 with Hertfordshire County Council, in relation to plot 1 in the parish of Bishop's Stortford, District of East Hertfordshire and as reported in Nigel Billingsley's proof at 3.7.5 powers over this plot have now been withdrawn from the Order. Consequential amendments include removal of former article 18 (power to acquire land) and former Schedule 5 and cross-references to it (article 5(5)).

2.3 Following the withdrawal of the objection from Lea Valley Regional Park on 25 September 2018, Network Rail has removed crossing H03 Slipe Lane (a private vehicular crossing) from the Order. This is because the parties have separately reached an agreement as to closure of another crossing not included in this Order which necessitated NR removing Slipe Lane from this Order. Consequential amendments are shown by the deletions in what are, in the 2.10.18 FVO article 25(2)(d), for sheet 3 in Schedule 3, and for the Borough of Broxbourne in Schedule 5.

2.4 Amendment to what was originally article 34 and Schedule 14 and are now article 32 and Schedule 13 (protective provisions for drainage boards and the Environment Agency) to reflect amendments agreed with the Environment Agency except as set out in the Environment Agency's letter dated 18 November and Network Rail's response dated 25 September 2018;

Amendment to compensation provisions

- 2.5 Article 15(6) has been amended so that the start date for the six-month claim period for compensation for loss or damage suffered as a result of a new public right of way coming into use does not run for 6 months from the date of the Order being made, as under section 28 of the Highways Act 1980, but rather runs for 6 months from the date of the new public right of way is brought into operation. This practical change will mean that compensation claims can be made based on actual rather than presumed or hypothetical loss, given that under what is now article 27 of the Order (time limit for exercise of powers of acquisition) Network Rail has five years in which to exercise compulsory acquisition powers and a limited number of the proposed new public rights of way are therefore likely to be completed within the first six months of the Order coming into force.

Changes to Compulsory Purchase legislation as a result of the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017

- 2.6 Provisions in the Housing and Planning Act 2016 ("the 2016 Act") and the Neighbourhood Planning Act 2017 have made substantial amendments to compulsory purchase legislation including the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Acquisition of Land Act 1981 which are referred to and, in respect of certain provisions, modified in their application in the Order. Network Rail's draft Order as applied for, took account of the amendments, particularly in what were articles 18 to 22 of and Schedule 13 to the draft Order.
- 2.7 However, it is only since the draft Order was submitted that TWAOs have been made that indicate how the Department for Transport wishes promoters of TWAOs to address the modifications made to compulsory purchase legislation. The 2.10.18 FWO Order has therefore been further amended to follow the changes adopted in the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017/1150), as appropriate and as set out below in more detail (with references to the article and schedule numbers below relating to the 2.10.18 FWO provisions):

Article 18 (Application of Part 1 of the 1965 Act)

- 2.8 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 19 (Application of the 1981 Act)

- 2.9 The draft Order has been revised to make consequential changes to section 5B of the 1981 Act as amended by the 2016 Act to maintain consistency with other provisions of the Order. Again these provisions reflect the practice in other recent draft TWA orders.

Schedule 12 (Modification of compensation and compulsory purchase enactments for creation of new rights)

- 2.10 This Schedule has been amended for consistency with the approach taken in the Buxton Sidings Order.

Deletion of former article 25 (set off for enhancement in value of land)

- 2.11 Amendments in the Neighbourhood Planning Act 2017 have come into force which insert new provisions into the Land Compensation Act 1961 including a new section 6B (Lower compensation if other land gains value). Section 6B has the same effect as article 25 and as the Order provides for Part 1 of the 1961 Act (including article 6B) to apply in relation to claims for compensation, former article 25 is no longer needed and is therefore deleted. (The Order then addresses any consequential changes to cross-referencing of articles).

Schedule 13 (Protection of drainage authorities and the Environment Agency)

- 2.12 Network Rail and the Environment Agency have been in negotiation regarding the protective provisions for drainage authorities and the Agency and the changes included in article 32 and Schedule 13 reflect the changes agreed between the parties and referenced in the letter from the Environment Agency to the Inspector dated 18 October 2017 and Network Rail's related note dated 25 September 2018.

Amendments arising as a result of notifications regarding projection issues:

- 2.13 As explained to the Inspector in a note dated 7 September 2018 and on Day 4 of the Inquiry (25 September 2018), Network Rail identified an issue with projection, which has been discussed with Essex County Council as highway authority. Network Rail wrote to affected landowners on 20 September 2018 with the original and amended plans to explain the amendments. A revised set of plans is submitted together with this filled up Order.
- 2.14 As a consequence the Order has been amended in the Order Schedules as necessary to correct the references to the P points, which have changed as follows:

Sheet	Description of Change
4	Position of Definitive Map (DM) has been corrected. P Points P010, P011, P012 and P013 corrected to fit with updated DM
5	Position of DM has been corrected. P Points P021, P022, P023, P024, P025, P026 and P027 corrected to fit with updated DM
6	Position of DM has been corrected. P Points P014 and P020 corrected to fit with updated DM
7	Position of DM has been corrected. P Points P029, P030, P031 and P032 corrected to fit with updated DM
11	Position of DM has been corrected. P Point P080 has been amended. P Point P081 has been deleted. PRow has been extended to fit with updated DM. P points P075 and P076 updated, and land plots 9, 10 and 13 moved to reflect amended route of new PRow.
16	Position of DM has been corrected. P Points P099, P100, P101 and P102 corrected to fit with updated DM. P Points P102, P104A and P105 changed to fit with new routes. P Points P107 and P108 have been deleted from the plan. Plots 08, 11 and 15 amended to suit the new PRow routes. Route of new PRow between P102 and P103 amended.
17	Position of DM has been corrected. P Points P109, P110, P111, and P112 corrected to fit with updated DM. P Points P116, P117, P118 and P119 have been deleted from the plan. Path Not on Definitive Map (PNDM) deleted as it lies on the new position of the DM
18	Position of DM has been corrected. P Points P120, P121, P122 and P123 corrected to fit with updated DM. P Points P124 and P125 have been deleted. PNDM deleted as it lies on the new position of the DM

Sheet	Description of Change
19	Position of DM has been corrected. P Points P126, P127, P128, and P129 corrected to fit with updated DM. P Points P128A, P133 and P134 have been deleted from the plan. PNDM deleted as it is lies on the new position of the DM
21	Position of DM has been corrected. P Points P137, P138 and P138A corrected to fit with updated DM. P Point P139 has been deleted.
23	Position of DM has been corrected. P Points P150, P151, P152, P152A, P153, P154 and P155 corrected to fit with updated DM.
24	Position of DM has been corrected. P Points P158, P159 and P160 corrected to fit with updated DM. P Point P157 has been deleted
25	Position of DM has been corrected. P Points P162, P163, P164, P166, P167 and R006 corrected to fit with updated DM.
26	Position of DM has been corrected. P Points P169, P170, P171, P172, P175 and P178 amended. Points P176 and P177 have been deleted from the plan.
27	Position of DM has been corrected. P Points P179, P181, P182, P183 and P184 corrected to fit with updated DM. P Points P180, P185A and P186A have been deleted. PNDM deleted as it is lies on the new position of the DM
28	Position of DM has been corrected. P Points 179A, P181A, P182A, P183A and 184A corrected to fit with updated DM. P Points P180A, P190 and P191 have been deleted and section of PNDM deleted as it is lies on the new position of the DM. PNDM between P points P183A and P184A has been adjusted.
29	Position of DM has been corrected. P Points P192, P193, P194 and P195 corrected to fit with updated DM. PRoW amended to fit with new position of P192.
30	Position of DM has been corrected. P Points P200, P201, P202, P203 and P105 corrected to fit with updated DM. Route of new PROW between P203 and P204 amended.
31	Position of DM has been corrected. P Points P206, P206A, P207, P208, P209, and P210 corrected to fit with updated DM. P Point P211 has been deleted. PRoW adjusted to fit with new position of P210. Correction done to the PNDM to fit with existing conditions.
32	Position of DM has been corrected. P Points P212, P213, P214 and P215 corrected to fit with updated DM. Adjustment done to the PNDM between points P213, P214, P220 and P221. P Point P219 has been deleted.
34	Position of DM has been corrected. P Points P228, P229, P230, P232, P233, P234 and P235 corrected to fit with updated DM.
35	Position of DM has been corrected. P Points P236, P237, P238, and P239 corrected to fit with updated DM. P Point P240 has been deleted. PNDM deleted as it is lies on the new position of the DM.
36	Position of DM has been corrected. P Points P245, P246, P247, P248, P250, P251 and P258 corrected to fit with updated DM. PRoW Adjusted to fit with the new positions of P248 and P251.
37	Position of DM has been corrected. P Point P257 corrected to fit with updated DM. New PRoW adjusted to fit with new position of P257.
38	Position of DM has been corrected. P Points P259, P260, P261, and P262 corrected to fit with updated DM. P Points P263 and P264 have been deleted. PNDM deleted as it is lies on the new position of the DM.
40	Position of DM has been corrected. P Point P276, P277, P278, P279, P280, P281, P282 and P283 corrected to fit with updated DM. New PRoW adjusted to tie in with updated DM.
49	Position of DM has been corrected. P Points P308, P309, P310, and P311 corrected to fit with updated DM.
50	Position of DM has been corrected. P Points P312, P313, P314, P315, P316, P317, P322, P323, P324 and P325 corrected to fit with the updated DM. New PRoW adjusted to tie in with updated DM.
51	Position of DM has been corrected. P Points P326, P327, P328, P329, P330 and P331 corrected to fit with updated DM.
52	P Points P338 and P339 corrected to fit with new route. Land parcels 20 and 21 have been deleted. New Public right of Way has been extended to the edge of track at point P339. Due to this change limits plot 22 amended and new two land parcels 22A and 22B have been provided for construction works area.
56	P Point P383 and new PRoW corrected to fit with updated DM. DM has been updated in the Borough of Brentwood and the Borough of Havering, and PNDM has been adjusted to fit with the new DM.

Sheet	Description of Change
57	Position of DM has been corrected. P Points P378, P379 and P380 corrected to fit with updated DM. P Point P377A added. PNDM has been included to fit with the new DM.
58	Position of DM has been corrected. P Points P387, P386 and P391 corrected to fit with updated DM. P Points P385 and P385A have been deleted.
63	Position of DM has been corrected. Points P415, P416, P417, P418, P422 and T006 corrected to fit with updated DM. PRoW adjusted to tie in with P415. PNDM deleted from plan.
64	Position of DM has been corrected. Points P424, P426, P427, P428, P429, P430, P431 and T007 corrected to fit with updated DM.
65	Position of DM has been corrected. Points P433, P434 and P432 corrected to fit with updated DM. PRoW adjusted between P Points P440 and P434. PNDM deleted from plan. New PRoW adjusted to tie in with updated DM at P433
66	Position of DM has been corrected. Points P441, P442 and P443 corrected to fit with updated DM. P Points P444, P 445 and P446 have been deleted. PNDM deleted as it lies on the new position of the DM

Amendments arising as a result of discussions with landowners

2.15 As also explained to the Inspector in a note dated 7 September 2018 and on Day 4 of the Inquiry (25 September 2018), Network Rail has been in discussions with landowners to seek to resolve objections where possible. Consultation has now taken place in relation to amendments proposed by certain landowners to the proposed proW route. Network Rail has (in accordance with note NR 104) written to other parties whose interests may be affected by the proposals. Network Rail consulted on the following crossings between 7 and 24 September:

E05 Fullers End (sheet 11)

E08 Henham (sheet 16)

E20 Snivellers (sheet 30)

No comments have been received by the programme officer at the date of this note.

For crossing T01 No. 131 (sheet 52), Network Rail commenced consultation with affected parties on 14 September 2018.

The revised plans submitted together with this filled up Order reflect these changes.

2.16 The consequential amendments to the Order as a result of these changes are as follows:

E05 Fullers End (sheet 11) - no change to order due to design change

E08 Henham (sheet 16) – The replacement routes have introduced new p points 104A and P102, as set out in columns 3 and 4 of Part 1 of Schedule 2

E20 Snivellers (sheet 30) - no change

For crossing T01 No. 131 (sheet 52), the replacement path now follows P339, P340 and P341, so the reference to P338 has been deleted in column 4 of Part 1 of Schedule 2, and to reflect the changes to the route on the plans, reference to new plots 22A and 22B have been added in the second column in Schedule 5, and plot 21 has been removed.

Other minor changes to the Order

2.17 A change has been made in the Explanatory Note to the Order as to the location for public inspection of the Order Plans and Book of Reference referred to in the Order to reflect Network Rail's current arrangements for inspection of documents.

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2.18 Further minor corrections have been made, such as to cross-references and typographical errors and in some cases, to the purposes for which particular plots of land are to be used in Schedules 5 and 6.

Winckworth Sherwood LLP

2.10.18

