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13 December 2018

Dear Tom

Thank you for your letter of 17 October 2018. We apologise for the delay in responding.

We note that the Trust maintains its objection to the Order in light of its concern relating to the part of the SSSI which is managed by a third party, and in particular, that "it would be threatened as a result of cutting off its last remaining vehicular access by the landowner" shown on Map 4 attached to your letter.

You refer to Network Rail's letter of 20 September, however, you do not mention the subsequent correspondence between the Trust and Network Rail, namely your email of 26 September and Network Rail's reply of 9 October, in which we stated that it has never been possible to access the part of the SSSI owned and managed by Mr Carpenter via the Fowlers crossing (H09), nor was there any evidence of Mr Carpenter accessing the SSSI via that crossing for the purpose of managing that part of the SSSI. Notwithstanding this, we confirmed "that the Order, if made, will provide a right of alternative access via a nearby underbridge, to enable Mr Carpenter to maintain access to the part of the SSSI owned and managed by him". This was reiterated by Network Rail's witness, Mr Andrew Kenning, when the crossing was heard at public inquiry into the Order on 17 October 2018.

As regards access to the SSSI by the Trust, as we stated in previous correspondence and discussions, the Trust has no legal rights of access to the SSSI over the Fowlers crossing. We discussed the position with the southern access at the meeting with the Trust on 4 September, and we reiterate that Network Rail's proposals do not affect the existing vehicular access to the part of the SSSI owned and managed by the Trust at

the southern end from Spellbrook Lane. When the issue of southern access to the SSSI was raised at inquiry on 18 October, Mr Kenning explained that the problem seemed to be limited to a pinch point on the southern part of the site, which could be resolved by the Trust within its landholding.

Therefore the Trust's statement that it "does not consider it is acceptable for a SSSI to be knowingly put in a position where its designated interest features are unable to be maintained into the future" is not, in Network Rail's view, either accurate or justified.

Network Rail also wishes to highlight that, as statutory consultee, Natural England (NE) was consulted on and considered Network Rail's proposals on a number of occasions. Firstly, in a response dated 28 February 2017 to the request for a screening opinion submitted to the Secretary of State, Natural England stated in relation to sites which included Thorley Flood Pound SSSI, that, "Based on the material provided it is our view that the proposed closures are not likely to significantly affect the interest features for which these sites are notified".

Following the screening report consultation, the Secretary of State confirmed by letter dated 15 March 2017 that no Environmental Impact Assessment was required to be undertaken. The screening decision confirms that there will be no significant effects on the SSSI due to the proposed crossing closures. As mentioned above, there will be no loss of lawful access to the SSSI and therefore no loss of biodiversity.

NE did not object to the Order; it submitted a representation dated 12 May 2017, which was subsequently withdrawn on 10 October 2017.

Regarding your comments about NR's duties under the Natural Environment and Rural Communities Act 2006 (the NERC Act), Network Rail is an arms-length public body. As such, under section 40 of the NERC Act in exercising its functions, it must have regard to the purpose of conserving biodiversity, so far as is consistent with the proper exercise of those functions. NR does not agree with your statement that it has not demonstrated due regard to its duty under the NERC Act.

As set out above, Network Rail carried out environmental assessments of its proposals and prepared and submitted to the Secretary of State an environmental impact assessment screening request report, which considered in detail potential environmental effects of its proposals. As part of its application documentation, Network Rail submitted a request for deemed planning permission for the development authorised by the Order if made. The request includes draft conditions of the planning permission, which include conditions reserving for subsequent approval of the local authority matters relating to archaeology, ecological mitigation, and working hours.

The condition relating to ecology stipulates that development cannot commence until a plan describing the mitigation procedures is submitted in writing and approved by the local planning authority. Network Rail has prepared a document Precautionary Method of Working (PMW) which it is currently consulting on with local planning authorities to ensure that the proposed mitigation measures are agreed as early as possible with local planning authorities in advance of the Order being made.

Network Rail is satisfied that it has shown due regard to its duty under the NERC Act.

Finally, you state that the Trust does not agree with the conclusions in Network Rail's letter dated 20 September 2018 but confirm that the Trust would be willing to withdraw its points of objection "specifically addressed in that letter, subject to confirmation of the offered compensatory sum of £4920 (exclusive of any VAT that may apply) to carry out ditch works at Thorley Wash Nature Reserve". You also state that the withdrawal is subject to confirmation that the Trust "would have no additional costs or liabilities with respect to maintaining the surface of the new proposed Public Rights of Way or any structures it passes over."

In its letter of 20 September 2018 Network Rail recognised a potential additional burden on the Trust in its capacity as landowner of the SSSI, as a result of placing the proposed footpath on its land, and how it may impact on the Trust's management of its land. In light of this, NR offered a payment by way of compensation towards the cost of future ditch works covering a period of five years. As stated in the letter, this offer is subject to the Trust "formally withdrawing their objection to the Order, the Order being made and Network Rail implementing the closure of H05 and H06 level crossings." We await your confirmation of the Trust's withdrawal of its objection to the Order in its entirety.

Network Rail confirms that it is required to maintain the new highway constructed pursuant to the Order (such as the proposed footpath on the Trust's land) for a period of 12 months from its completion and after the expiry of that period, maintenance of the footpath will be the responsibility of the highway authority.

We trust that we have answered all points in the Trust's objection and allayed any concerns in relation to the future management of the SSSI by the Trust, as well as the landowner who owns and manages a part of it.

Yours sincerely



Elizabeth Noonan
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Network Rail

Cc Joanna Vincent, Inquiry Programme Manager, Persona Associates