

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (INQUIRIES
PROCEDURE) RULES 2004**

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

ANDREW KENNING

**REBUTTAL OF
PROOF OF EVIDENCE**

-OF-

NFU

Document Reference	NR/30/4/3 (Crossings: E12 Wallaces & E47 Bluehouse)
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I have reviewed the 'Written Proof of Evidence by the NFU' submitted in support of its objection to the Order (Obj/34). I have the following comments on the evidence as presented:

Consultation

1. I note that, in section 3 of the Written Proof of Evidence, a number of complaints are made about consultation and engagement with NFU and its members. I discuss, generally, the consultation undertaken by Network Rail in Section 3 of my Proof of Evidence (NR 30/1) and engagement with landowners is addressed by Nigel Billingsley in Section 5 of his Proof of Evidence (NR 29-1). Susan Tilbrook sets out, in her Proof of Evidence, how engagement with landowners informed the development of the proposals now contained within the Order in the sections addressing individual crossings (NR 32-3).
2. Whilst Network Rail acknowledges that a number of landowners are frustrated that the proposals contained within the Order have not been changed as they would have wished, this has not always been possible, as Network Rail has had to consider not only affected landowners but also the need to provide a suitable and convenient right of way in place of that affected by the Order.
3. Network Rail therefore does not accept that it has failed to engage constructively with farmers and landowners affected by the Order.

Impacts on Agricultural Businesses

4. At section 4 of the Written Proof of Evidence, the NFU set out what they consider to be the likely impacts of closure or downgrading of level crossings on agricultural businesses, focussing, in particular, on access to farm holdings. This evidence appears to be very generalised in its nature and does not properly reflect what is proposed as part of this Order. By way of example, I am not aware that any of the land potentially affected by the Order is used for the growing of sugar beet, or that any land affected by the Order is situated within internal drainage boards (as contended at para 5.14 of the NFU Proof).
5. This Order would only affect private rights of way in respect of 5 level crossings, namely:
 - a. E07 Ugley,
 - b. E12 Wallaces,
 - c. E28 Whipps Farmers,
 - d. E57 Wivenhoe Park,
 - e. H09 Fowlers
6. E07 – as set out in Section 10 of my Proof of Evidence, the need for this crossing has essentially fallen away. There is no evidence of any use over the past 5 years. No objection been received from the landowner.
7. E12 – the rights across this crossing are limited to use as a footpath only. There are no vehicular rights across this crossing. Further, the claimed use of this crossing is in connection with shoots run on the Estate: not agricultural or horticultural operations.
8. E28 – the Order includes provision for Network Rail to acquire rights over third party land in order to provide an alternative route for the affected land. This is one field that instead of being accessed from Warley Street, it will be accessed from St Mary's Lane. I note that the

land owner who is to benefit from the new access is not objecting, nor is the land owner whose land would have the new access on.

9. E57 – the land accessed via the level crossing is not in active agricultural or horticultural use, but is currently used as part of a land stewardship scheme. The Order includes provision for Network Rail to acquire rights over third party land in order to provide an alternative route for the affected land.
10. H09 – the land accessed over the level crossing is not in active agricultural or horticultural use. It is used as private grassland for recreational use. Alternative access is being provided via a nearby underbridge, which although it has a reduced headroom, Network Rail believe that grass cutting equipment can still be taken through the underbridge.
11. Only one of these level crossings could be said to be used at ‘harvest time’ and thus have an impact of ‘timely access’ namely E28 Whipps Farmers. Network Rail believes that they have provided a suitable alternative at this location and notes that the land owner is not objecting to the proposal to provide an alternative access.
12. At paragraph 4.8, it is suggested that, in some circumstances, the alternative route proposed is not suitable for agricultural machinery, and sets out the vehicular access said to be required, in general terms, by a modern farm. The Proof does not, however, specify the routes which are said to be deficient. Where we are affecting private agricultural access, we are looking to provide an equivalent access to that that already exists. Network Rail is satisfied that the alternative routes proposed are suitable replacements, and notes, it is not part of the Order to enhance access to the land by providing improved access.

Public rights of way

13. In section 5 of the Written Proof of Evidence, the NFU raises a number of concerns regarding the diversion or creation of public rights of way on agricultural land.
14. A concern is raised at paragraphs 5.8 and 5.9 about the impact of new rights of way on livestock. Network Rail is aware of only 3 instances in which where livestock are kept in fields affected by the proposals. There are;
 - a. E08 Henham,
 - b. E16 Maldon Road,
 - c. E48 Wheatsheaf
15. In the instances above fencing has been considered, or proposed as a means of preventing problems from dogs not being controlled (etc). Network Rail will continue to discuss this with affected landowners. I would also note that in respect of E48, the field in question is already subject to an unfenced, cross-field right of way, whereas we are proposing a field-edge footpath, separated from the field by fence as shown on the Design Freeze Plan.
16. With regards to rural crime and fly-tipping, the detailed design of the proposed diversionary routes, and interface with affected land, is still to be developed. If the Order is confirmed, Network Rail will seek to discuss opportunities to install appropriate security measures to prevent illegal access with affected landowners at that time.
17. I note that the NFU also does not agree with the approach which Network Rail has taken to identifying whether a diversionary route is ‘required’ or in deciding to locate the diversionary route on third party land rather than on land owned by Network Rail. This is addressed in my

Proof of Evidence, and in the Proof of Evidence of Susan Tilbrook, and I do not repeat that evidence here.

18. In respect of landholdings which are subject to Environmental Stewardship, I am advised that the existence of a public right of way does not prevent a farm being part of the environmental stewardship scheme. If the creation of a new right of way means that changes need to be made to the holding to meet the requirements set out in the relevant scheme guidance, and this results in a 'loss', I am advised that this could be considered under the compensation provisions in the Order.

Witness declaration

I hereby declare as follows:

- (i) This proof of evidence includes all facts which I regard as being relevant to the opinions that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.
- (ii) I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.
- (iii) I understand my duty to the Inquiry to help it with matters within my expertise and I have complied with that duty.