

Note for the inspector regarding the adjournment of the inquiry for the Network Rail (Essex and Others Level Crossing Reduction) Order application (the “Essex application”)

Background

Network Rail took note of complaints in some of the objections regarding omissions from the Book of Reference and commissioned their land agents to audit the land registry data.

The land agents carried out land registry searches for the entire Essex application and reviewed title information. Unfortunately it was not possible to conclude this exercise prior to the start of the inquiry for the Essex application (the “Inquiry”).

Notification of the issue and details on the number of notices

When through this process initial analysis revealed that 54 new notices (based on a notice per interest per plot) needed to be served, Winckworth Sherwood immediately contacted the TWAO Unit on Thursday 19 October 2017 (day 2 of the Inquiry) to inform them. They also sought leave to write to new parties and serve late notices the following day giving those parties 42 days in which to object. This information was also relayed to Network Rail and Winckworth Sherwood colleagues at Inquiry, who sought further details and a breakdown of the notices to be served, such as the number of new parties and those who had been served already in relation to other plots, so as to be in a position to fully inform the Inspector and the Inquiry.

During the morning of 20 October 2017 (day 3 of the Inquiry), when that breakdown was checked (so as to report as accurate a picture of the position to the Inspector as possible) two further notices were identified and this information was relayed to the Inspector in the afternoon on day 3 of the Inquiry. The breakdown that Counsel for Network Rail provided to the Inspector was:

56 Notices broken down as:

- 12 new parties – 17 notices
- 12 existing parties - 13 notices relating to additional plots of land
- 8 Mortgage companies – 26 notices

Totalling 32 interests, in 46 plots, relating to 17 crossings.

When the land agents prepared the notices to be served, during the afternoon of Friday 20 October, it became apparent that two of the parties identified required notices to be served for more than one plot. These had not been included in the breakdown given to Counsel. The number of parties reported by Counsel remained the same but the number of notices actually served increased to 60, as detailed in the attached table. Those parties had until 1 December 2017 to object to or make representations to the Secretary of State.

Since the adjournment of the Inquiry a full land referencing audit has been undertaken. The land referencing firm’s processes have been interrogated by Network Rail, Winckworth Sherwood and Network Rail’s new land agents. Remaining unregistered land has been checked to ensure diligent inquiries have been carried out and the transfer of data used for compilation of the Book of Reference and subsequent service of notices has been checked. These further checks have now been completed resulting in the service of further notices as follows:

- 8 November 2017: 14 notices served on 12 new parties. The objection period ended on 20 December 2017.

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- 23 November 2017: 12 notices served on 2 existing parties (one of whom also had notice on 20 October for an different land interest). The objection period will end on 11 January 2018 (allowing an extra week for the Christmas/New Year holiday).

Therefore a total of 86 notices have been served on 45 parties (24 new parties, 13 existing parties and 8 mortgagees). 58 plots of land and 18 crossings were affected. The details of the notices served are contained in the attached table.

In the circumstances, Network Rail will issue an updated Book of Reference before the public inquiry is reconvened to reflect the checks and update following the land referencing review and Network Rail has assurance from its land referencers that the Book of Reference is compliant with Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Rules”).

Compliance with statutory requirements

On day 1 of the Inquiry, following opening submissions, Counsel for Network Rail raised a number of key matters which Network Rail thought should be brought to the attention of the Inquiry, being matters which might need to be raised or discussed during the course of the inquiry. The first matter related to the amended Order and form of changes to it. The next related to potential amendments to diversionary routes and amended plans. The third matter was that an audit was being undertaken of the book of reference. With the benefit of hindsight, it is recognised that it might have been helpful if this item had been raised during the earlier exchanges relating to the submission to the inspector of the compliance folder, and for the reference to that audit to have been included with the note within the compliance folder.

The compliance folder supplied to the Inspector (which is in the same terms as submitted to past inquiries) contains a note of the steps taken for compliance with statutory procedures, together with:

- examples and/or copies of the formal notices served or displayed; and
- copies of the Affidavits which were submitted to the Orders Unit proving compliance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Rules”) as specified in Rule 10(8).

Rule 10(8) requires that as soon as practicable after the date of application, the applicant submit to the Secretary of State evidence by affidavit of compliance with the provisions of rules 13, 14(1) to (8) and 15 and exhibit to the affidavits copies of the newspaper and London Gazette notices required under rule 14. Rule 13 requires that the applicant serve every local authority in whose area a transport system or other works to which the application relates are and those named in the relevant categories in Schedule 5 to the Rules with a copy of the application documents and a statement specifying the capacity (or capacities) in which they are served, the expiry date for objections and the address to which objections are to be sent.

Rule 14 sets out the publicity required for an application. Rules 14(1) to (3) require notices containing specified information about the application to be publicised in the London Gazette and newspapers circulating in the area in which the works are or in which the proposals are intended to have effect. Rules 14(4) and (5) require to be served on those named in the relevant categories in Schedule 6 to the Rules notice about the application including where the application documents can be viewed and details of how to object, with the closing date. Rule 14(6) requires the display of site notices, in a form prescribed, as close as reasonably practicable in a public place to the proposed site for site of the works. Rule 14(7) requires the display of notices, in a form prescribed, as close as reasonably practicable to the point any extinguishment or diversion of a public right of way or stopping up, diversion or restriction on use of a street. Rule 14 (8) relates to the discontinuance of railway services and is not relevant to this Order.

Rule 15(1) requires that the applicant, immediately after the application has been made, serve a notice in the form of Form 5 in Schedule 2 to the Rules on all those, named in the book of reference described in rule 12(8). The book of reference is described in rule 12(8)(a) and (b) to contain the names of all owners, lessees, tenants or occupiers of any land which it is subject to compulsory acquisition, or rights to use land and those who enjoy easements or other private rights in land to be extinguished; in (c) and (d) certain other categories of interest and in (e) to specify certain land types. Rule 12(10) clarifies that the book of reference only need include names required by rule 12(8) paragraphs (a) to (d) which have been ascertained, after making diligent inquiry, 28 days before making application. Network Rail had written assurance from both the contractor it instructed to carry out the land referencing and preparation of the Book of Reference, and the firm sub-contracted by that contractor to undertake that work, that the documents met the requirements of Network Rail for an application under the Transport and Works Act 1992. Therefore, Network Rail's understanding was that the Book of Reference was compliant.

The compliance folder note at paragraph 3 confirms that all parties in the Book of Reference have been served, which was the case. The issue that has come to light since is that a number of parties have been missed from the Book of Reference, which Network Rail has now addressed.

As explained above, unfortunately on day 1 of the Inquiry the land referencing audit had not been completed and Network Rail were urgently seeking to establish the position. However, Network Rail was transparent and contacted the Orders Unit as soon as it became clear that some parties had been missed from the Book of Reference and that notices would need to be served.

Network apologises that it was not possible to identify this sooner and that the issue led to the adjournment of the Inquiry.

Winckworth Sherwood LLP
22 December 2017