

SPEAKING NOTE ON S22 WEATHERBY

Network Rail's position is that there are no public rights of way over S22 Weatherby, and any claim for public rights of way by reason of longer user would be bound to fail.

As set out in its Position Statement of 8th March, Network Rail therefore maintained that (1) the Secretary of State could properly proceed on the basis that there are no public rights of way over the level crossing; (2) that s.5(6) of the Transport and Works Act 1992 is therefore not engaged; and (3) it is neither required to provide an alternative right of way nor is any alternative route required to be "suitable and convenient", as those considerations only came into play if s.5(6) was engaged.

For the avoidance of doubt, Network Rail strongly rejects any suggestion that it has not been clear throughout its case that the status of rights over S22 Weatherby was a relevant issue: it has, throughout, made clear that it considers there to be no public rights of way over this crossing. Nor does it accept that its position has been 'disingenuous': whilst it has maintained that no public rights of way exist – or could be claimed – over the crossing, it has properly acknowledged that the effect of the Order would be to extinguish any rights which may exist over the crossing. It would, to be frank, have been disingenuous not to have acknowledged this to be the case.

Network Rail has reflected further upon the questions raised by the Inspector, and the submissions filed on behalf of Suffolk County Council and the Ramblers Association.

It acknowledges that the effect of the Order, if approved, would be to extinguish any rights of way which exist over the crossing – including, although it is not accepted that any such rights do exist, any public rights of way.

It also acknowledges that there has not, as yet, been any formal claim made for a public right of way over the crossing at S22 Weatherby, although it notes its intention to close the crossing, and its position that no PROW exist over it, have been in the public domain for some considerable time.

It notes that the Ramblers Association accepts that if Network Rail is correct as to the status of this crossings that there is nothing to stop Network Rail simply closing it.¹ Suffolk County Council do not address this matter in their position statement but do not appear to suggest that that course of action is not open to Network Rail as a matter of law.

Against that background, without conceding the validity or correctness of the analysis in its Position Statement, and purely in the interests of adopting a pragmatic approach to this inquiry, Network Rail would suggest that the inquiry proceed on the following basis.

Firstly, that the Inspector consider whether the diversionary route identified by Network Rail is "suitable and convenient" – as with the other crossings in the Order.

Secondly, if the Inspector considers that it is not "suitable and convenient", that he recommends the removal of S22 Weatherby from the Order.

This approach would render it unnecessary for the Inspector (and latterly Secretary of State) to make any findings as to the status of the rights enjoyed over S22 Weatherby. If this approach is adopted, then, should the Inspector agree with Network Rail that the diversionary route is suitable and convenient, the crossing can properly remain in the Order for closure. However, in the event that the Inspector considers that the diversionary route is not suitable and convenient and S22 is

¹ Ramblers Association 'DRAFT Note on the status of C22 Weatherby Crossing' para 10

removed from the Order, it will be for Network Rail to take such actions as it sees fit with regards the crossing – including closure on the basis that it is not subject to any public rights of way.

It is considered that this proposed course of action would provide a pragmatic, and workable, means of proceeding with this inquiry, and represents a sensible compromise between the positions advanced by Network Rail, Suffolk County Council and the Ramblers Association in their respective position statements.

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Landmark Chambers

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