

The Network Rail (Suffolk Level Crossing Reduction) Order (“the Order”)

Network Rail’s response to

TRANSPORT AND WORKS ACT 1992
APPLICATION FOR THE AWARD OF COSTS BY PAUL EDMUND BAKER OBJ/26
REGARDING THE APPLICATION FOR THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL
CROSSING REDUCTION) ORDER DATE 24 May 2018

(the application)

1. The application is made by Mr Paul Edmund Baker, *Partner of Messrs E Hudson Baker Chapel Farm Gipping Stowmarket Suffolk IP14 4PT. Occupier of land affected by the proposed changes to rights of way over crossing identified in the order as S12 Gooderhams, S13 Fords Green and S69 Bacton* (“the claimant”).
2. The application is made by reference to paragraphs 4.123 and 4.124 of the Guide to TWA Procedures 2006 (“the TWAO Guide”).
3. The claimant states in paragraph 5 that “*the cost application is being submitted in respect to Network Rail and its Agents’ unreasonable behaviour*”, as further expanded in subparagraphs 5.1 – 5.3:
 - 5.1 *Poor communication and inefficient consultation causing stakeholders to object after the Order rather than being able to reach common ground solutions prior to the order.*
 - 5.2 *Incomplete investigation of the Order proposals and failure to supply detail when requested.*
 - 5.3 *Supply of incorrect information (then withdrawn at late stage) that was relied upon by stakeholders in good faith.*
4. The claimant states in paragraph 3 of the application “*Costs applied for. In regard to extra costs incurred as a result of relying on incorrect information given to the claimant by Network Rails agent’s*”.
5. Paragraph 4.123 of the TWAO Guide to which Mr Baker refers at paragraph 4 of the application mentions the Department of Transport Circular 3/94 (“the Circular”) in which guidance on awards of costs is given.
6. Annex 2¹ to the Circular sets out examples of what may be regarded as unreasonable behaviour in inquiry, resulting in an award of costs if abortive expense is incurred:
 - failing to provide an adequate pre-inquiry [] statement of case, for example, unclear presentation of facts or arguments []
 - causing an inquiry [] to be adjourned or unnecessarily prolonged by the late submission without good reason of a statement of case, [] or of a proof of evidence []
 - causing an objector to call a professional witness to attend unnecessarily – for example where a technical issue could have been resolved satisfactorily by prior discussion.

¹ General Procedural Requirements in Proceedings in Respect of Applications for Orders Under Section 6 of the Act: Unreasonable Behaviour: Awards Against Applicants or Objectors

7. Network Rail submits that its conduct at inquiry does not fall within any of the examples given in Annex 2 to the Circular.
8. The claimant refers to paragraph 4.124 of the TWA Guide which states that *“it should be borne in mind [] that behaviour before an inquiry is as relevant in this regard as behaviour at the inquiry itself”* and *“procedure rules are designed to secure maximum disclosure and exchange of information before the inquiry or hearing takes place”*.
9. Network Rail has complied with the procedural requirements set out in The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (the 2006 Rules), including the requirement in rule 10(d) to provide *“a report summarising the consultations that have been undertaken, []”*.
10. Network Rail has submitted with the application documents the Statement of Consultation (NR05) setting out the consultation approach, scope and methodology, as well as feedback from two rounds of consultation. Landowners’ comments from the two rounds consultations and responses from the project team are noted in the Statement of Consultation.
11. Network Rail has complied with the requirements of The Transport and Works (Inquiries Procedure) Rules 2004 (the 2004 Rules) to provide the Statement of Case and Proofs of Evidence. It set out its case in detail at inquiry through the submissions of its legal counsel and in evidence given by its witnesses.
12. Mr Baker acknowledges that he participated in and provided feedback to the two rounds of consultation on Network Rail’s proposals and that there had been communication with Network Rail to clarify the Order proposals prior to Network Rail submitting the application.
13. Mr Baker states that constructive communication with Network Rail *“all but broke down when seeking clarification of Network Rail’s intentions. Particularly regarding the crossings that we have an interest in following the second round of consultation”*.
14. Network Rail engaged extensively with Mr Baker and other objectors who submitted their objections to the closure of crossings S12, S13 and S69. Following clarification and confirmation from Network Rail, Mr Baker withdrew his objection to the closure of crossing S12 provided that Network Rail implemented its original proposals as submitted with the application documents. Mr Baker also confirmed that he intended to maintain his objection to Network Rail’s proposals for S13 and S69.
15. Network Rail acknowledged and indeed, as Mr Baker confirms in his application, apologised at inquiry for the confusion with the design freeze plan which had been sent to Mr Baker in the period before the application for the Order was made (GEN-04 design freeze plan). Mr Baker did receive the correct Order plan sheets with the rule 15 (of the 2006 Rules) landowner notice in March 2017.
16. Notwithstanding that confusion, Mr Baker submitted his objection to the order, the statement of case and proof of evidence in accordance with the requirements of the 2004 Rules and attended and gave evidence at inquiry.
17. Mr Baker also had an opportunity at inquiry to present his proposals for order modifications, which he has continued to promote notwithstanding Network Rail’s earlier confirmation that the plan GEN-04 was not correct and having received the correct plan with the rule 15 notice.
18. Mr Baker states that he understood that the GEN-04 design plan (which turned out to be not the final design freeze plan as submitted with the application) *“had been submitted to the affected S13 landowners and potentially other stakeholders”* and therefore that his

“alternate treatment of S13 proposals were not a “new proposed right of Way and had been consulted on””.

19. Network Rail rejects this submission. Whilst Network Rail regrets the confusion with the design freeze plans, both Mr Baker and other affected landowners received the correct Order plans with the rule 15 landowner notice which enabled all affected parties to object to the Order. The final design freeze plan, was included within the Design Guide (NR12) submitted with the Order application documents.
20. Mr Baker’s contention is that “the incorrect disclosure of these maps [the GEN-04 plan] misdirected my [Mr Baker’s] and other parties’ resources”. Mr Baker states at paragraph 6.5.4.2 of the application that “If stakeholders had not received the GEN-04 map or their relevance had been challenged earlier we [Mr Baker] would have been unlikely to pursue the alternate proposal as a valid modification of the order as per TWAO guidance”.
21. Network Rail rejects this submission. As stated above, notwithstanding the confusion with the versions of the design freeze plans before the Order application was made, Mr Baker was served with the correct application documents which enabled him to object to the Order and submit his statement of case and proof of evidence, and to participate in the inquiry. Network Rail confirmed its proposals at S13 in its response letter dated 19 December 2017 to Mr Baker’s objection to the Order.
22. In his note submitted to inquiry (OP-INQ-47) Mr Baker continues to pursue his alternative proposal despite being aware at that time that GEN-04 was incorrect.
23. Mr Baker has properly presented his modifications to the inspector at inquiry and Network Rail explained in evidence in inquiry and in the note submitted to inquiry (NR-INQ-76) why Mr Baker’s proposals were not acceptable.
24. Mr Baker asserts at paragraph 6.5.4.5 that “Even within the Inquiry Network Rail would or could not give further detail on the likely impact of the order on the claimant”.
25. Network Rail rejects this submission. Mr Kenning and Mr Billinglsey addressed the impact of the Order proposals on Mr Baker’s land interest and business.
26. Network Rail rejects the assertion in paragraph 7 of the application that Mr Baker incurred additional cost “caused by Network Rail’s poor communication and my [Mr Baker’s] reliance on incorrect information given by them [Network Rail] and the late withdrawal of it.
27. For the reasons set out above, Network Rail does not consider that the application is justified and requests that the Secretary of State refuses the application.

Winckworth Sherwood
24 May 2018