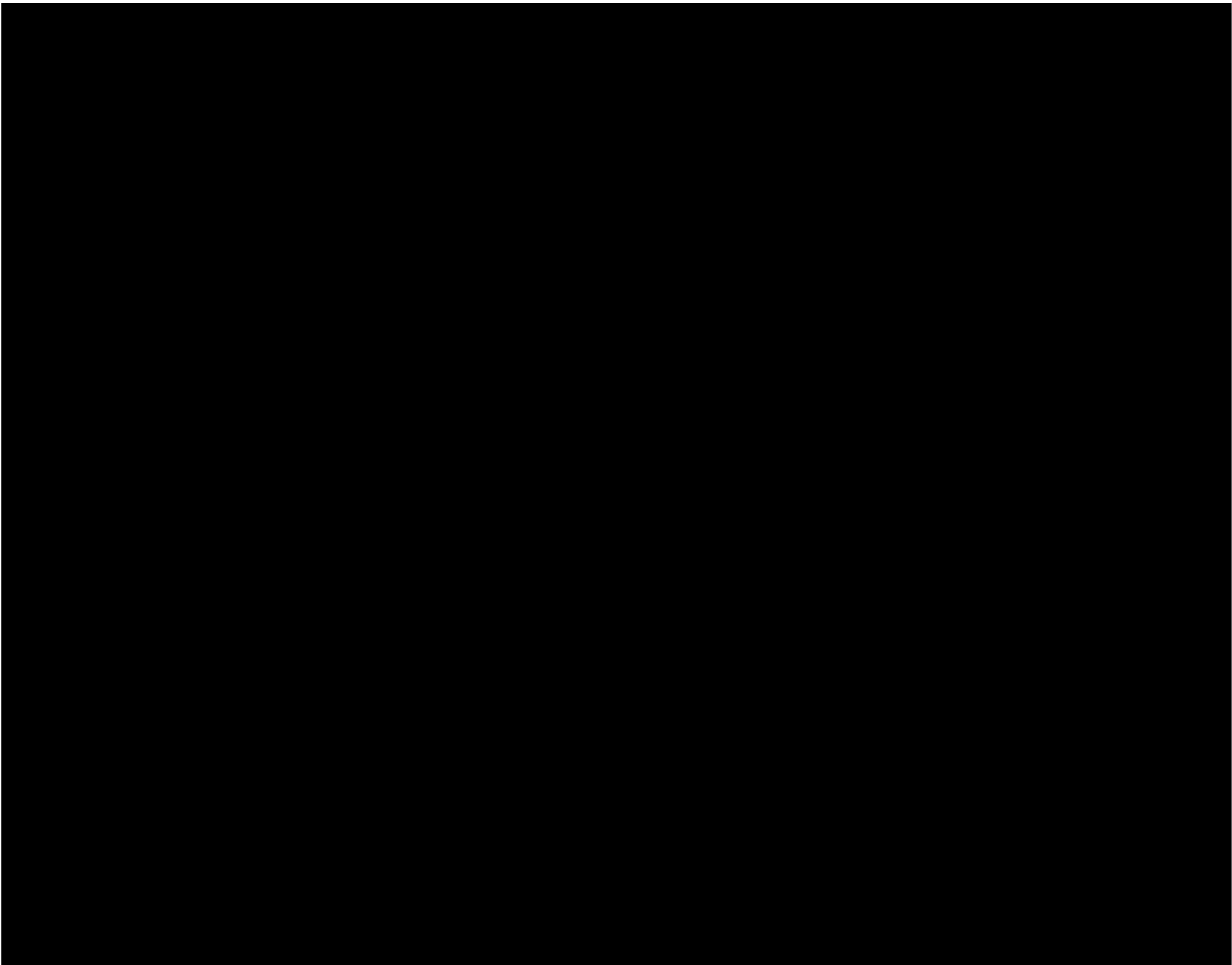




From: Chalk Daniel [REDACTED]
Sent: 24 November 2015 09:38
To: Neil Crowther
Cc: Robey Clive; Karl Roberts; Toolan Adrian
Subject: RE: Proposed M&S off Brook Lane, Rustington - LPA Ref: A-23-15-OUT

Neil,

It should not be for the applicant to determine their contribution. Network Rail have justified our reasons for requiring mitigation and have provided the figure required to implement the system. The system is required to mitigate the impact that the development poses; the development provides a destination which would otherwise be an area of open space and the increase from the extant situation is significant.

The sum provided represents a recommendation that should be upheld on the basis that if the mitigation isn't provided the development is not acceptable. The sum also represents a figure which is significantly less than that which would normally be required to provide a footbridge and we are confident that our justification supports the figure requested. We would also highlight that Network Rail is a public body and should not be expected to mitigate increased safety risks across the network as a result of development. There appears to be no reason for suggesting £12,500 other than that it represents 50%. We therefore continue to recommend, when considering the scale of development, that £25,000 is a reasonable figure considering it has the potential to save a fatality.

Kind regards,

Dan Chalk MCiHT, MIHE
Town Planner, Property
1 Eversholt Street, London, NW1 2DN
[REDACTED]

www.networkrail.co.uk/property

From: Edward Ledwidge [REDACTED]
Sent: 23 November 2015 21:31
To: Edward Ledwidge; Neil Crowther
Cc: Chalk Daniel; Robey Clive; Karl Roberts; Toolan Adrian
Subject: RE: Proposed M&S off Brook Lane, Rustington - LPA Ref: A-23-15-OUT

Dear Neil

Further to my email below, given that issues surrounding the level crossing are extant and need to be addressed by Network Rail in any event, we do not consider that it would be appropriate for the applicant to meet the full cost of the suggested COVTEC system.

Accordingly the applicant would be prepared to contribute 50% of the estimated cost (i.e. £12,500 assuming this is the full cost) in addition to a signage scheme (as previously proposed).

We trust that this will be acceptable.

Kind regards

Edward

Edward Ledwidge MRTPI
Partner
Montagu Evans LLP
5 Bolton Street
London
W1J 8BA

[REDACTED]

Edward Ledwidge [REDACTED] wrote:
Neil

Thank you for the response from Network Rail below.

We maintain that the level of pedestrian movement over the level crossing will not materially change as a result of the proposed development and that any such movement would amount to trespassing over private land along a very unattractive route, making it all the more unlikely. However, it is possible, in the absence of any physical barriers, that a very small number of people may decide to take this route regardless.

Therefore, the applicant would be prepared, in principle, to make a contribution towards the suggested COVTEC installation as suggested and we would be happy for you to report this to the planning committee accordingly.

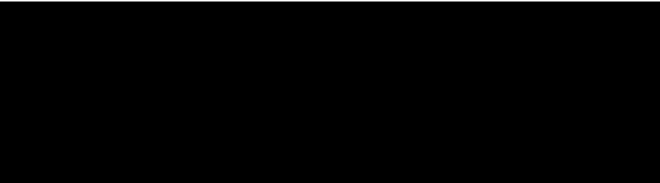
In terms of the suggested amount, I have a meeting with my client later today and will respond further this afternoon.

Kind regards

Edward

Edward Ledwidge MRTPI
Partner

Montagu Evans LLP
5 Bolton Street, London W1J 8BA



From: Chalk Daniel [REDACTED]
Sent: 20 November 2015 11:26
To: David Innes
Cc: Toolan Adrian; Robey Clive; Taylor Steven (Town Planner); Karl Roberts
Subject: Proposed M&S off Brook Lane, Rustington - LPA Ref: A-23-15-OUT

David,

In relation to the above application I was disappointed to read the Committee Report which has been put forward by the Council in preparation for 25/11/2015. As you are aware Network Rail raised an objection to the proposal on the basis of increased safety risk at Brook Lane level crossing. Network Rail's original consultation response contained the following:

"The applicant's Transport Assessment incorrectly states at Paragraph 2.8 that the Brook Lane crossing point over the railway line is not a public highway and has no public right of way. The public have a right to use the crossing, it is an established footpath, and it would appear that the crossing itself is designated as a formal Public Right of Way. Notwithstanding the arguments surrounding the status of Brook Lane and the crossing, pedestrians currently use the route and will still use the route to access the development. The Transport Assessment fails to fully assess the likely increase in footfall which will occur over the crossing and has not submitted a PERS Audit to ascertain the amount of pedestrian traffic which currently uses the crossing and/or Brook Lane.

Network Rail is confident that that the development proposal will increase the use of the crossing significantly. The nearby residential areas, the location of the site in relation to alternative crossing points, and the modal split contained within the TRICS assessments all support this assumption. With regard to the TRICS assessments, Table 4.6 shows that a total population of 2812 reside in the catchment area, within wards which could reasonably be expected to use the route (West, Brookfield, Beach & River). The modal split shown in Table 4.19 shows that 21% of people can be expected to walk to the retail space and 15% to the public house, the adjusted modal split cannot be used as due to the incorrect assumption of where pedestrians will arrive from; again the TA incorrectly states in Paragraph 4.61 that the site will only be accessible from the east. The TA and subsequent request(s) for further information from the applicant lack clarity in terms of the expected total number of trips to site by all transport modes, in the absence of this information Network Rail can only assess the severity of the risk using internally generated TRICS reports, with parameters and modal split which reflect the worst case scenario.

NR's reports show total pedestrian trip rate (retail element + public house) of 4474 of which 44% can be expected to arrive from wards which may use the level crossing (1967); 21% of these can be expected to be pedestrians giving a total pedestrian trip rate of 394 for the total development.

Safety Report shows 24 safety incidents have been recorded. Although the majority involved vandalism and/or youths on track, four of the incidents involved people stepping out in front of trains which could be contributed to not being fully aware of the train's presence altogether, the speed at which it was travelling, or from sheer impatience. It is these sorts of occurrences which are likely to increase in probability with more people using the crossing.

Having assessed the likely safety implications which would be likely to occur as a result of increased pedestrian traffic on the level crossing in this location, Network Rail wish to object to the application.

Reason: Safe and suitable access cannot be provided to site in accordance with Paragraph 32 of the NPPF

Network Rail may be willing to withdraw the objection, subject to the applicant entering discussions and subsequently providing a reasonable contribution towards the provision of a ramped footbridge over the crossing, which is required to mitigate the severity of risk that the development poses."

Since providing the consultation response the applicant has made little effort to address the concerns raised and has merely argued the fact that Brook Lane won't/can't be used by members of the public. As I mentioned to the one of the consultant's working on behalf of the application, this simply isn't true. The Committee Report which the Council has written states the following:

"The objection raised by Network Rail in respect of the level crossing along this PRow has been discussed with the applicant. The applicant considers that whilst they are aware of the issue of safety at the level crossing in Brook Lane, the nature of the route that runs to and from residential area [sic] south of the railway line is not a route a visitor to the development would use. This is a PRow that provides a link from Worthing Road (B1287 to Brook Lane on the A2159 via Penfold lane. Penfold Lane is a grassed track that is generally muddy with no lights. The applicant therefore consider [sic] that it should not be necessary to provide footbridge [sic] crossing at the Brook Lane level crossing.

Whilst the Council recognises the need for safe crossing via footbridge [sic] as requested by Network Rail, it is considered that as result of [sic] the proposed development there will not be any significant increase in the number users [sic] along this PRow and the level crossing given the current condition of Penfold Lane ".

The above section in the report gives great cause for concern, not least because it would appear that the Council are allowing the applicant to assess and make definitive decisions on their own application, without the Council (as determining authority) re-consulting or liaising with their statutory consultee (Network Rail). I would also question whether the assessing officer has looked at the siting of crossing in relation to the development; the Penfold Lane PRow does not bear any relation to this application. In fact the only way in which it may be a factor is that due to it being a "grassed track that is generally very muddy with no lights" it means that people are even less likely to circumnavigate Brook Lane. The route from the residential areas south of the track to the application site will be via the level crossing and Brook Lane.

To clarify, Brook Lane is not a dedicated Public Right of Way or a highway maintainable at public expense, however we must take a pragmatic view on this. The fact is that it is an established, defined route, where the 'public at large' can pass and repass, without hindrance, and the fact that it appears to be well over 20 years old, means that it can be considered to be a 'highway', whether it's private land or not. It's connection between a publically maintainable highway and a formally recognised Public Right of Way (Penfold Lane), also supports the argument that whatever its status, the route will be used. I note that the Local Highway Authority also consider that the route is likely to be used and have even offered a steer as how best to regularise the status.

With regards to the use of planning obligations, we have outlined our justification for requesting mitigation contributions in my previous response. We will only object to an application on transport grounds if the residual

cumulative impact of the development is considered 'severe' and mitigation measures are only sought where they are required to make development acceptable in planning terms. The roads and routes to site, the characteristics of the observed users at the crossing, the existing characteristics and previous safety record at the crossing itself, the scale and nature of the development, and the likely route assignment of surrounding residential areas, are all contributing factors which lead Network Rail to believe that it's reasonable at this stage to object to the proposal on transport safety grounds. The previous consultation response also advises that further assessment work could have been undertaken and submitted to enable us to reassess the proposal, which hasn't been carried out. In order for us to effectively assess the proposal we require specific assessment of the likely impact on the crossing; the original TA contained no such assessment and I therefore based my calculations on the worst case scenario, using population figures and the potential for increased usage.

Network Rail considers the seeking of contributions to mitigate increased safety risk to be reasonable for a proposal which, at this stage of the assessment, will likely result in significantly increased usage at the crossing. It is noted that any obligation which is sort must be fairly and reasonably related in scale and kind to the development which is why we are open to discussion as to the best way of mitigating the increased safety risk; we will only request a contribution towards what is often a costly safety improvement (i.e. a footbridge) for Network Rail to undertake should no other suitable method be found. In this regard I don't believe the signage that the applicant has proposed will suffice.

Having reviewed our original mitigation request, Network Rail are now in position to inform the Council that we do not believe it will be possible to provide a footbridge in this location due to funding and land constraints. We therefore wish to formally amend our response to the following:

Having assessed the likely safety implications which would be likely to occur as a result of increased pedestrian traffic on the level crossing in this location, Network Rail recommend that no objection be raised subject to the following:

- **£25,000 to be secured via legal agreement to enable the installation of a COVTEC system to be installed at Brook Lane level crossing**

Reason: To enable the increased safety risk to be suitably mitigated and ensure safe and suitable access can be provided in accordance with Paragraph 32 of the NPPF

The COVTEC system has been developed to be used at footpath crossings such as Brook Lane. COVTEC is only installed where whistle boards are already installed. Currently train drivers are required to sound the train horn when passing the whistle board. Two issues arise here:

- The driver may forget to sound the horn.
- A user may not hear the horn due to being distracted, probably wearing headphones, which is not an uncommon occurrence.

Therefore when the train passes the whistle board, a piece of equipment triggers the sound of a train horn at the crossing.

I would appreciate it if you could respond to me direct on the concerns I have outlined above and I would urge you to reconsider your recommendations for the forthcoming Committee .

Kind regards,



Dan Chalk MCiHT, MIHE
Town Planner, Property
1 Eversholt Street, London, NW1 2DN

The content of this email (and any attachment) is confidential. It may also be legally privileged or otherwise protected from disclosure.
This email should not be used by anyone who is not an original intended recipient, nor may it be copied or disclosed to anyone who is not an original intended recipient.

If you have received this email by mistake please notify us by emailing the sender, and then delete the email and any copies from your system.

Liability cannot be accepted for statements made which are clearly the sender's own and not made on behalf of Network Rail.
Network Rail Infrastructure Limited registered in England and Wales No. 2904587, registered office
Network Rail, 2nd Floor, One Eversholt Street, London, NW1 2DN

<http://www.arun.gov.uk>
NLPG UPRN 100062237016
DX 57406 Littlehampton

Important Notice This e-mail is intended exclusively for the addressee and may contain information that is confidential and/or privileged. If you are not the intended recipient (or authorised to receive it for the addressee), please notify the sender and delete the e-mail immediately; using, copying, or disclosing it to anyone else, is strictly prohibited and may be unlawful. Any views, opinions or options presented are solely those of the author and do not necessarily represent those of Arun District Council. The information in this e-mail may be subject to public disclosure under the Freedom of Information Act 2000, therefore we cannot guarantee that we will not provide the whole or part of this e-mail to a third party. The Council reserves the right to monitor e-mails in accordance with relevant legislation. Whilst outgoing e-mails are checked for viruses, we cannot guarantee this e-mail is virus-free or has not been intercepted or changed and we do not accept liability for any damage caused. Any reference to "e-mail" in this disclaimer includes any attachments.

This e-mail is intended solely for the person to whom it is addressed. It may contain confidential or privileged information. If you have received it in error, please notify the sender immediately and destroy the transmission. You must not copy, distribute or take any action in reliance on it.

Montagu Evans LLP is a limited liability partnership registered in England and Wales. Registered number OC312072. A list of members' names is available for inspection at the registered office 5 Bolton Street, London W1J 8BA.

The content of this email (and any attachment) is confidential. It may also be legally privileged or otherwise protected from disclosure.
This email should not be used by anyone who is not an original intended recipient, nor may it be copied or disclosed to anyone who is not an original intended recipient.

If you have received this email by mistake please notify us by emailing the sender, and then delete the email and any copies from your system.

Liability cannot be accepted for statements made which are clearly the sender's own and not made on behalf of Network Rail.

Network Rail Infrastructure Limited registered in England and Wales No. 2904587, registered office
Network Rail, 2nd Floor, One Eversholt Street, London, NW1 2DN

