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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

33rd meeting
Strasbourg, 3-6 December 2013

Complaint in stand-by

**Cutting of trees for the expansion of the railway
network
(United Kingdom)**

REPORT BY THE GOVERNMENT

*Document prepared by
the Department for Environment, Food and Rural Affairs, United Kingdom*



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BERN CONVENTION – COMPLAINT AGAINST NETWORK RAIL BY TREE SAVERS

1. I refer to the Complaint raised by Mr Andrew Flint, on behalf of the residents of Cromwell Road, Whitstable, Kent, England, about tree clearance undertaken by Network Rail along a railway embankment in that area. I am now in a position to provide a comprehensive response in this respect.
2. I should first point out that the original Complaint and the Decision of the Bureau at its April meeting, both refer to the work being undertaken for an expansion of the rail network, which was not the case. The work was deemed necessary to reduce the risk of vegetation affecting the safe operation of trains in the area. Perhaps it would be useful if I provided some information by way of background to this particular matter.
3. I understand from Network Rail that there was a planned programme of line side vegetation work at Whitstable along the Belmont Road side of the railway (industrial estate) as well as the Cromwell Road side (residential properties). Communications about the works were delivered to both the Belmont Road and Cromwell Road sides of the railway. The Belmont Road works were carried out first and whilst these works were being carried out complaints were then received from the residents from the Cromwell Road side. In light of this Network Rail held a large number of public meetings which actually resulted in a delay to the start of the works on the Cromwell Road side.
4. In the interim period Network Rail commissioned an independent survey which confirmed the presence of nesting birds on the Cromwell Road side. In accordance with legislation (the Wildlife & Countryside Act 1981), and their management practices, Network Rail subsequently postponed the works until such time when it would be likely that all nesting had finished. Network Rail have now, following the vegetation clearance, delivered a planting programme along the Cromwell Road side using tree species less likely to pose issues to rail operations.
5. Network Rail have accepted that their communications to local residents were poorly handled in this matter, and this may be partly the reason for the subsequent Complaint. Whilst they held a large number of public meetings they admit to not doing enough proactive communication with local residents to explain why the clearance was required before commencing the works. I understand that Network Rail are looking into how they can improve their processes in this regard.
6. Current legislation provides for the protection of flora and fauna and their habitats and also allows companies like Network Rail to meet their regulatory obligations, in this instance, to operate a safe efficient and sustainable railway infrastructure. Network Rail do not accept that the work at Whitstable breached the law as their vegetation management procedures have been written to avoid breaches of the legislation.
7. In addition to the content of this letter I have attached, at **Annex A**, a paper which provides additional information addressing the main points of Mr Flint's Complaint (in bold) which I hope you

and the Bureau will find useful. A copy of Network Rail's Standard on the "Management of lineside vegetation" is attached to the covering e-mail.

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Annex A

Response from Network Rail to the main points raised in the Complaint

The accusation that Network Rail’s policy to maintain rail side embankments is simply to remove all of the trees.....

1. This is not the case. We manage vegetation consistent with operating a safe, efficient and reliable railway and in accordance with our responsibilities to the environment. As already detailed above we are very familiar with our obligations under the package of environmental legislation which protects flora and fauna and their habitats.

2. Standard “NR/L2/TRK/5201: Management of lineside vegetation” does not require all trees to be removed. Our standards are regularly reviewed and assessed and a copy of the latest standard is attached (*to the covering e-mail*). The document lays down risk assessments to be undertaken for individual trees as well as those that would deal with issues caused by groups of trees. It allows for trees to be retained and then managed according to any assessed risk as far as is reasonably practicable.

3. Network Rail is currently drawing together a land management strategy to undertake ecosystem valuation and then, by working with stakeholders, manage and maintain the infrastructure in such a manner that the varied biodiversity found across the rail network can be enhanced.

The reason being given for this policy, that it is purely for safety reasons....

4. Please see the answer to the first question, there is no such policy to simply remove all trees.

5. The reason for this specific vegetation standard, and for all maintenance of the rail network, is to enable us to operate a safe, efficient and sustainable railway infrastructure.

Wildlife corridors are being destroyed through this policy.....

6. Please see the answer to first question, there is no such policy to simply remove all trees.

7. The average width of the railway land between the fence and the rail closest to the fence is 12m; at Whitstable the width ranges from 6 to 19m. Depending on the speed of trains for a particular section of track, the first 5m from the rails has to be kept clear of woody vegetation which then leaves a thin strip of land 7 metres wide which has to be managed to reduce the risk of vegetation affecting the safe operation of trains.

8. Over and above this 5m clearance requirement, the work at Whitstable was instigated because of the impact that trees can have on the clay embankments as they draw water out during the summer months. In such situations, and as was undertaken at Whitstable, the trees from the top part of the embankment are removed to reduce the desiccation from that area, whilst the trees on the lower parts of the slope are retained to assist with stability of the slope.

9. In thin sections of land, removing trees that directly affect the safe operation of the railway can lead to other trees becoming more vulnerable to toppling and thus also needing removal. This may therefore remove some of the tree habitat. However, there is often the opportunity to create other habitat types which are of benefit to other species of plant and animal. We have to balance vegetation management with the aspirations of our lineside neighbours who are often keen to retain trees on the boundary to act as a visual barrier. This is not always possible.

Trees at Cromwell Road have been cut down even in the breeding season which breaches the Wildlife & Countryside Act.....

10. The removal of trees during the [bird] breeding season does not in itself breach the Wildlife & Countryside Act 1981 (as amended). What is not permitted under the act is to:

- intentionally;

“take, damage or destroy the nest of a wild bird included in Schedule ZAI

take, damage or destroy the nest of any wild bird while that nest is in use or being built; or

- intentionally or recklessly:

disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or

disturb dependent young of such a bird,”

11. In order to comply with the legislation trees removed on the south side of the site (Belmont Road) were subjected to daily nesting bird checks and exclusions zones were marked out and left when nests were found.

12. A survey undertaken on the north side of the site (Cromwell Road) identified 6 nests and other locations where it was likely that nesting activity would be taking place and work was postponed until a time when it would be likely that all nesting had finished; surveys were undertaken at this time to make sure.

13. Prior to all operations, Natural England (the Governments advisor on the natural environment) had been contacted regarding Sites of Special Scientific Interest (SSSIs) in the area. They were satisfied that as long as work followed the method statements then there would be no adverse impact on the features of the Thanet Coast and Swale SSSIs.

Network Rail did not carry out a proper Environmental Impact Assessment for the Cromwell Road work.....

14. Under the relevant legislation an EIA was not required. As mentioned above, surveys were undertaken daily on the Belmont Road side of the railway.

An unsatisfactory ecological survey of the area was carried out by a contractor.....

15. As already stated in the answer to question 4 our contractors checked trees removed on the Belmont Road side for birds' nests, to ensure we did not breach the Wildlife and Countryside Act. The survey that was undertaken on the Cromwell Road side, which ultimately lead to the suspension of work, was undertaken by a Chartered Environmentalist and member of the Chartered Institute of Ecology and Environmental Management.

What do Network Rail do to minimise the impact of tree felling?

16. Network Rail only removes trees where it is necessary for the safe and efficient operation of the railway, as required by our licence to operate, and does so within the relevant legislation.

17. At this particular location, the trees were retained at the bottom of the embankment wherever possible. Not only does this assist with the visual impact important to the lineside neighbours, but it also retains an element of vertical structure to the habitat which can be important for some species. The planting programme, together with the future management of the retained trees and any open space created, helps to create a mosaic of habitats in an urban area which can be far more biodiverse than a monoculture of sycamore regeneration.