

DOCUMENT NUMBER KCC17 – COPY OF THE APPLICATION FOR THE ORDER INCLUDING THE CASE PUT FORWARD BY THE OPERATOR JUSTIFYING THE NEED FOR AN ORDER TO CLOSE OR DIVERT THE RAILWAY CROSSING

The Highways Act 1980 – Section 118A

**The Kent County Council (Public Footpaths CW80 & CWX40, Whitstable)
Rail Crossing Extinguishment and Definitive Map and Statement Modification
Order 2018**

As is explained in the Regulation Panel report (a copy of the report can be found at **Document Number KCC21**), the original application was to divert the path to run over a stepped bridge. Due to objections received to that proposal including City Councillor opinions, it was decided to amend the application to propose an extinguishment. It was considered unnecessary for Network Rail to submit another separate application as the criteria and reasons for the amended proposal remained the same.

REQUEST FOR A RAIL CROSSING DIVERSION ORDER TO BE MADE UNDER SECTION 119A OF THE HIGHWAYS ACT 1980 (INSERTED BY THE TRANSPORT AND WORKS ACT 1992)

The following questions are to be answered and the information and maps requested to be supplied by the applicant to the council which is to be requested to make the order. Tick the relevant box shown in some questions.

FOR AUTHORITY'S USE ONLY

File Ref: / /

Date acknowledged:

1. RAIL CROSSING TO BE EXTINGUISHED BY THE DIVERSION ORDER

- (a) Name and location of rail crossing (including grid reference and parish or district in which it is located).

Name: Glebe Way Level Crossing
Nearest station: Whitstable
Mileage: VIR @ 58 miles 35 chains
NGR: TR105659
Parish: Whitstable
District: Canterbury
County: Kent

- (b) Name(s) and number(s) of any footpaths and/or bridleways leading to the crossing to be extinguished. (Indicate whether footpath or bridleway.)

FP No: CW 80

- (c) Length in metres of any path or way to be extinguished.

16 metres.

- (d) Description of any length of path or way to be extinguished by reference to terminal points shown on attached map which must be to a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily available.

The dotted line on the attached plan.

- (e) List the name(s) and address(es) of the owners, lessees and occupiers of the land on either side of any path or way to be extinguished.

The Applicant is the owner of all relevant land.

- (f) Have you obtained the written consent of every person having an interest in the land over which any path or way to be extinguished passes, in so far as such consent is needed?

N/A

If YES, enclose all the written consents.

Please see (e) above.

If NO, enclose all written consents that you now possess and give particulars of those where consent has been refused or has yet to be obtained.

- (g) Is the crossing, or any path or way to be extinguished, subject to any limitations or conditions?

Yes

If YES, give details.

The railway is on a low embankment at the location of the crossing and the tarmac approaches ramp up to the crossing on both sides. There is also uneven surfacing around the level crossing.

The crossing currently has a metal kissing gate on the approach to both sides, which limits the accessible width on the approaches to the crossing. Whilst kissing gate arrangements are not generally considered accessible to users with pushchairs and bicycles, limited use by both was recorded during the nine day census in March 2015.

The kissing gate arrangement does prevent use by those using a wheelchair or mobility scooter.

2. NEW PATHS OR WAYS TO BE CREATED

- (a) Describe type: Bridleway or Footpath

Footpath

- (b) Give description: width, length, terminal points (indicating any sections which run over existing paths or ways) by reference to the accompanying map at paragraph 1(d) above.

Width: 1.6m useable width allowing for handrail protrusion

Length: 145 metres

Diversion route is shown by a dashed line on the attached plan.

- (c) List the name(s) and address(es) of the owners, lessees or occupiers of the land over which the new path(s) or way(s) would pass.

The Applicant is the owner of all relevant land.

- (d) Have you obtained the written consent of every person having an interest in the land over which the path or way to be created passes, to this land being dedicated for this purpose, in so far as such consent is needed?

The Applicant is the owner of all relevant land.

If YES, enclose all the written consents.

Please see (c) above.

- (e) Are you prepared to maintain all or part of the path or way to be created?

It is envisaged that Network Rail will maintain the structure of the bridge with the Highway Authority taking on responsibility of the surfacing of the diverted route.

- (f) Will the highway authority accept responsibility for that part of the path or way to be created which does not pass over the applicant's land?

N/A

If YES, a copy of any relevant letter must be attached.

If NO, state reasons.

- (g) Are you prepared to enter into an agreement with the council in accordance with section 119A(8)?

Yes.

- (h) Will the new path or way connect with a trunk road?

No.

- (i) Give reasons for the proposed rail crossing diversion order. Include information about:

- i. The use currently made of the existing path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information, together with details of any survey carried out (any circumstances preventing or inhibiting such use must also be mentioned);

The path over the level crossing is well used by local residents, dog walkers and families.

Following a 9 day census in October 2016 an average of 115 users per day were recorded. Due to the presence of kissing gates, no wheelchair or mobility scooters were recorded using the crossing. There was however 7 cyclist movements recorded over the crossing during this 9 day period.

An earlier 9 day census in March 2015 (referred to in the attached DIA) recorded an average of 201 users per day. During this census a total of 135 children were recorded using the crossing; 41 of these were unaccompanied.

Despite the presence of kissing gates there were 10 recorded uses made by pushchairs/prams and eight cyclists were recorded using the crossing over these nine days

These daily averages of 115 and 201 users over the level crossing are considered to be a high level of use over a public footpath level crossing.

As detailed above, it is also known that people will cross over the level crossing with bicycles and pushchairs/prams; thus impeding their manoeuvrability/ability to react to an approaching train and slowing them down in general when passing over the level crossing.

- ii. The risk to the public of continuing to use the present crossing, and the circumstances that have given rise to the need to make the proposed order;

The last risk assessment was carried out on 26th October 2016. On Network Rail's All Level Crossing Risk Model, which assigns a relative risk to each level crossing, the crossing scored a rating of C4, making it high risk.

The key risk drivers are:

- Limited sighting of approaching trains
- Fast and frequent trains
- High level of users
- Sun glare
- Reduced sighting in summer months due to vegetation
- Reduced sighting due to fog

However, it is felt that these factors do not adequately represent the risk at this level crossing and Network Rail's view that this crossing poses a likelihood of danger to the public.

There are numerous safety risks to users inherent in all level crossings. At Glebe Way, users are instructed to 'Stop, Look, Listen' and 'Beware of Trains'. The specific risks include:

- Sighting of trains may be obscured by vegetation, fog, or a train passing in the opposite direction;
- The sound of an approaching train or its warning horn may be obscured due to high background noise, high winds, heavy rain or nearby traffic;
- After waiting for an approaching train to pass a pedestrian can step out directly after the train has passed them on the nearest rail and step out from behind the train and straight into the path of an approaching train in the opposite direction, which would have been unseen and unheard due to the first passing train;
- A group of walkers, especially children, may follow one another onto the level crossing, without thinking to look for themselves, especially if otherwise distracted within the group;
- Users may have difficulty using the crossing due to visual or hearing impairment or distraction with headphones etc;

- Users may be slow-moving due to a disability or age. If these users are not taken into account as part of the risk assessment due to their scarcity, there may not be sufficient time provided for them to safely cross over the crossing;
- If a user is able to see a train, they may misjudge its speed and believe they have sufficient time to cross;
- A user may trip, fall or collapse in front of an approaching train, especially if already crossing and then panic at seeing a train approaching and bearing down on them;
- A user may attempt to leave the level crossing and walk along the track to retrieve an unleashed dog or due to another distraction.

Records show that there were 33 incidents of misuse, trespass and near misses reported between 1998 and 2016. Of these, four were fatalities and five near misses along with sixteen incidents of trespass, two equipment concerns, one suicide intervention and a personal accident where a person was hit by a train but not killed. There were also four incidents of trains being damaged due to objects having been either placed on the line or thrown near the crossing. The full Incident Log is attached.

It is clear from the Incident Log that the level crossing presents an uncontrollable risk which should be removed from the railway network.

The level crossing is situated between Clifton Road/Portway (to the north) and Glebe Way to the south.



When crossing from Clifton Road to Glebe Way and looking west/right, there is sufficient available sighting of approaching trains to a user:



When looking east/left from the same point, the sighting available is:



This photo helps to demonstrate the track curvature that cannot be fully appreciated from the Glebe Way side of the level crossing; giving users only 244 metres of available sighting.

When looking east/right when crossing from Glebe Way the available sighting is only 293 metres and again affected by the track curvature:



When looking west/left from the same point, there is sufficient sighting available:



It is estimated that an average person would require 8 seconds to safely pass over the crossing.

Vulnerable users (children, elderly, or encumbered users with dogs, bicycles, carrying bags etc.) would require approximately 50% longer to safely pass over the crossing. Whilst use by the elderly and youths was captured during the census, it is not considered to be of a high enough level of use to increase the allocated crossing time.

There is high-level parliamentary recognition of adopting categories of vulnerable users specifically in connection with assessing level crossings in public safety terms: see House of Commons Safety at Level Crossings (11th Report of Session 2013-2014): Part 4I from paragraph 41: '*young people*' are vulnerable persons crossing, *inter alia*, '*because they cannot process correctly the speed of objects coming towards them*'; older users may be vulnerable, by reason of mobility and sighting impairment.

'Vulnerable' characteristics/features include, but are not limited to, the particularly young, the aged (who possess a comparatively high propensity for developing a sight, hearing and/or mobility impairment and unable to walk fast or unaided), others with sight, hearing and/or other impairments.

Persons with improvised impairment, being those wearing hoodies/obstructing headwear or using head/ear phones, talking on a

mobile phone, or those burdened by a heavy bag, trolley, bicycle, persons walking/leading dog(s) or any combination of the these are also considered to be vulnerable in safety terms and the activity poses a category of vulnerability, which adds to the risk at level crossings.

The minimum sighting distance required at this level crossing is 232 metres, which is achievable in all directions, thus the level crossing is compliant.

However, due to track curvature and known vegetation growth issues, which limit the available sighting during the summer months, whistle boards are present at this level crossing, which provide users with a warning time of 9.8 seconds.

Whistle boards require train drivers to sound their horns on approaching the level crossing. This system relies on the individual actions of drivers and the residual risk remains that users of the level crossing may not hear or appreciate the significance of the train horn. There is also a risk that drivers will fail to sound their horn as required thus providing no warning of approach to users.

In order to be effective whistle boards cannot be placed further than 400 metres from the level crossing; in this location whistle boards are located at 297 metres on the Up line and 300 metres on the Down line and are thus within the compliant distance.

It must be noted however that whistle boards only ever provide a partial mitigation; at certain times they will be ineffective due to above average background noise and are also ineffective to warn users with hearing impairments or those wearing headphones.

During both 9 day census' usage of the level crossing was captured between the hours of 23.00 and 07.00 (referred to as 'dark hours'); during these times train drivers are not permitted to sound their horns; this results in users of the level crossing during these hours having no warning of an approaching train.

It is worth noting that if 50% additional crossing time is to be factored in to account for vulnerable users, taking the crossing time from 8 seconds to 12 seconds, the sighting available in all directions would be insufficient, as would the warning time provided by the train horn; Network Rail would need to reposition the whistle boards and it is possible these would need to be beyond the 400 metre point, thus resulting in the crossing being non-compliant. If this situation were to occur it is extremely likely that Network Rail would need to take action to temporarily close the level crossing to prevent a serious incident or another fatality occurring.

Following the tragic fatality (deemed an accident) of a 15 year old girl in February 2015, the coroner raised a number of concerns. For

completeness, the coroner's report is attached and an overview of each concern raised is detailed below, together with Network Rail's responses/actions:

1. The whistle boards on both lines may be sited too close to the crossing the crossing to provide sufficient reaction time for both pedestrians and train drivers. This is so despite the evidence that the whistle boards are within compliant range of distances.
2. There is a real prospect that pedestrians with hearing difficulties or those listening to a portable device...will not hear the distant audible warning.
3. Only providing a distant audible alert may not be a fully effective means of warning pedestrians. There is an absence of an audible alert issued from speakers at the crossing.

An audible warning system called COVTEC was installed at the level crossing in January 2016. This device replicates the sound of a train horn directly at the crossing and works by using a laser to detect an approaching train. This system is a 'stand-alone' system and is not operated by the driver of the train; the system will continue to sound during 'dark hours', thus providing users with a warning of an approaching train. The installation of COVTEC has reduced the risk to users at the level crossing by approximately 10%, but this level crossing still poses an unacceptable risk.

4. There is an absence of a visual alert system at the crossing.

The installation of visual warning systems is considered further below, however it is noted that the installation of red/green lights does not necessarily reduce the risk at level crossings, and the cost of installation can be similar to, or more than, installation of a stepped footbridge.

5. There is an absence of any dedicated lighting sited over the crossing.

Network Rail have addressed this concern by the installation of low level blue solar powered carriage lights, which were installed in February 2016, along the edge of the crossing decking. Crossings of this type are not usually lit as it may cause interference with signals and confuse train drivers. Further, at this location there are street lights present on both sides of the crossing, outside of the Network Rail boundary, which provide ambient lighting to the crossing.

6. Although the crossing fell into a 'high risk' category...no immediate action appears to have been taken despite fatalities in 2010, 2011 and April 2012.

These fatalities were connected suicides and could not have been prevented without full closure of the level crossing. Unfortunately we are unable to prevent suicides on the railway.

If the level crossing is closed via the installation of the proposed footbridge, then access onto the railway line will be prevented at this location and thus suicides occurring at this location will also be prevented.

The main concern at this crossing is the high level of usage, and particularly by families/groups and encumbered walkers; this vastly increases the risk of an incident as users are less likely to be paying full attention to the crossing, approaching trains and their surroundings when carrying objects, in large groups or concentrating on children, other walkers and dogs.

Whilst the level crossing surface is not at a skew, there is uneven surfacing around the decking as well as a slight incline on the approaches, which may distract users as well as causing them to lose balance or trip when carrying/guiding objects etc.

The line speed on both lines over the crossing is currently 65 mph; it is possible that this line speed will be increased in line with government policies to reduce passenger journey times.

According to the Highway Code the typical braking distance for a car travelling at 70mph is 75m; the braking distance for a passenger train travelling at 70mph is 730m. At 50mph, a car can stop within 38m, a train travelling at 50mph would take 380m; this does not account for thinking time of the driver in taking reactive action to make an emergency break.

Our judgement of speed is intuitive and often based on our daily experience of road vehicles. This can give us a highly inaccurate perception of the speed of an approaching train, which is travelling in an environment without many of the usual markers which help us to evaluate speed and distance (e.g buildings, road markings, other cars etc).

Our knowledge of the braking capacity of road vehicles, based upon the friction achieved between modern treaded rubber compound tyres and tarmac road surfaces, is of a different nature to the considerably longer distance required for trains relying upon the friction between metal wheels and metal track.

Based on these perceptions it is possible for pedestrians to see an approaching train and believe they have time to cross before the train reaches the level crossing, or that the train may be able to stop in time; this is not the case.

There are currently 86 trains timetabled to pass over the crossing per day; it is also possible that this number may increase in line with government desires to increase passenger numbers on the railway.

- iii. The effect of the extinguishment of the crossing and the creation of the proposed new path(s) or way(s) having regard to the convenience to users and the effect on any connecting rights of way and the network as a whole;

It is proposed to divert the footpath to a newly erected stepped footbridge approximately 53 metres to the east of the existing level crossing.

Closure of the level crossing without provision of an alternative, or by constructing a subway or bridge at or near the site of the existing level crossing, will alter the physical characteristics of the current route. This could potentially lead to some users having to travel further, but it would also improve their safety, as all alternative crossings of the railway remove the need for users to come into direct contact with the operational railway.

It would not be possible for Network Rail to pursue an accessible solution at this location given land ownership (both for siting of the structure and land to enable construction – any ramped structure would require the removal of Clifton Road) and funding constraints. It is also unlikely that a ramped footbridge in this location would be successful in obtaining planning permission due to the size and bulk of the required structure and the proximity to existing dwellings.

Convenience to users will be minimally impacted as the proposed diversion route links the land on both sides of the crossing and also links up to the existing footpath network in the area at the same points as the current footpath.

In considering the characteristics of those users captured during the 9 day census of the level crossing, the evidence indicates a very low level of inconvenience will arise by virtue of the proposed footbridge, weighed against the safety benefits. Diverting the public away from the existing level crossing onto a safer route nullifies any low level inconvenience that an objecting minority may perceive arises from this proposal.

The proposed diversion route will take approximately 3-4 minutes to walk.

Network Rail has a target to have a 'net positive contribution to biodiversity' this means that we will try to improve what we have taken away and will work with the Highway Authority to determine whether any highways improvement works are feasible along the diversion routes or to improve the links to other public rights of way.

- iv. The opportunity for taking alternative action to remedy the problem such as a bridge or tunnel in place of the existing crossing or the carrying out of safety improvements to the existing crossing;

A stepped footbridge to the east of the level crossing is the proposed solution.

Whistle boards are positioned on both lines approaching the crossing as sighting of approaching trains during the summer months can be deficient in both directions. Whistle boards assist in mitigating the risk at level crossings, but do not remove the risk, as discussed above.

Vegetation management has been undertaken, and is regularly required to maintain current sighting distances, but due to track curvature no further improvement could be made to available sighting.

Due to insufficient land ownership and inadequate funding availability no other works can be undertaken to improve safety of the crossing in its current form and location.

A PSR would not be appropriate at the level crossing. A reduction in speed will inevitably affect train performance levels and timetabling. This is contrary to Network Rail's licence conditions to operate the railway network efficiently and economically, so far as is reasonably practical and in having regard to all relevant circumstances to satisfy the needs of train operators. Any proposed reduction in speed would need to be approved by stakeholders and that agreement to such a permanent reduction in speeds would not be reached.

Miniature Stop Lights have been considered, but they do not remove the risk as pedestrians still cross on the level in front of trains and, as they are only a visual indication (with yodel alarm) it is becoming more evident that MSLs are often disregarded by users.

Another scenario which can arise from the use of MSLs is that a train travelling at less than the maximum permitted speed could initiate the activation of the MSLs ahead of a train approaching from the opposite direction and place crossing users at risk from the second train should they become impatient at the increased waiting time resulting from the initiation of the lights by the first (slower) train and may decide to cross having waited long enough for the first train to pass.

MSLs also have a disproportionate installation and maintenance cost.

Please see the attached DIA for further details.

- v. The estimated cost of any practicable measures identified under (iv) above;

The cost of installation of an MSL system would be in the region of £650,000.

Please see attached DIA for further details.

- vi. The barriers and/or signs that would need to be erected at the crossing and the points from which any path or way is to be extinguished or created, assuming the order is confirmed; and

The existing level crossing will be securely fenced off in order to prevent unauthorised access to the railway. Any signage required by the Council at the crossing (and any other points) will be provided.

- vii. The safety of the alternative right of way to be created by the order relative to the existing rail crossing.

The diverted footpath will remove the need for users to pass at grade over the railway via a level crossing and will move members of the public away from the railway infrastructure entirely.

There will be no need for whistle boards to be retained.

The stepped footbridge will have the following safety features:

- Visually contrasting, warm to touch handrails at two levels;
- Visually contrasting stair nosings
- Tactile paving strips
- Anti-slip surfacing
- Landing areas

Users will be able to enjoy free flowing passage over the railway line.

3. NAMES AND ADDRESSES OF PUBLIC UTILITY UNDERTAKERS IN AREA (whether or not their apparatus is likely to be affected):

- (a) Public gas supplier

Southern Gas Networks Ltd
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

- (b) Public electricity supplier

UK Power Networks plc
Newington House
237 Southwark Bridge Road
London SE1 6NP

- (c) Water undertaker

South East Water
Rocfort Road
Snodland
Kent ME6 5AH

(d) Sewerage undertaker (if different)

Southern Water
PO Box 41
Worthing BN13 3NZ

(e) Public telecommunications operator

BT Openreach
National Notice Handling Centre
PP 3WW18
Telecom House
Trinity Street
Hanley
Stoke-on-Trent ST1 5ND

(f) Others (specify).

N/A

4. MAPS AND PLANS

List below all maps and plans accompanying this request, giving details of their scale and content. In addition to the map mentioned in paragraph 1(d), this must include a map of a scale not less than 1:25,000 or, if no such map is available, on the largest scale readily available, showing the crossing and any paths or ways to be extinguished or created, and any connecting paths or ways.

The route of the public footpath to be extinguished is shown on the attached plan in a dotted line. The route of the proposed diversion is shown in a dashed line.

5. OTHER INFORMATION

Give any other information you consider relevant.

Pedestrians have crossed the railway since its creation and are still expected to cross the railway today, in the path of approaching trains. Railway lines were originally built for slower trains and there is no longer the relative safety of the 1800s (loud, slow moving steam powered trains); level crossings are now inherently dangerous places due to trains having got progressively bigger, faster and quieter.

Level crossings are not permitted on new railways in the 21st century due to the inherent risk they pose (e.g. HS1).

The Highways Act 1980 uses the term 'safe' in s.119A, but leaves it undefined; the dictionary definition includes 'free from danger.' In absolute terms, the only safe way to cross the railway (solely in terms of interaction with the railway) is via a bridge or tunnel, where there is absolutely no potential for pedestrians and trains to come into contact. Where that is not possible then it has to be at a fully controlled and monitored level crossing. Glebe Way public footpath level crossing is unprotected and a pedestrian is not prevented from walking directly into the path of an approaching train; unprotected or passive crossings can be judged as having an unacceptable level of risk to all users.

Research into human behaviour shows us that individuals don't always act in the same way, every day; their judgement of speed and stopping distances is intuitive and often based on the size of a road vehicle, giving an inaccurate perception of the speed of an approaching train. It also does not take into consideration the braking capability of road vehicles compared with the considerably longer distance required for a train to stop.

An individual's judgement of distance and the audibility of warning horns can be affected by the weather and other ambient factors. Research also shows that certain groups are the most at risk level crossings, particularly the elderly and infirm and the young, and these are specifically considered in our risk assessment process. The factors relating to misuse no longer just relate to those gambling on the time it takes to cross the railway but it is more evident through distractions, such as pedestrians wearing hoodies and earphones and just not seeing an approaching train until it is too late.

Network Rail has a legal duty under the Health and Safety at Work etc Act 1974 (as amended) to ensure the safety of its employees and those affected by its operations. Level crossings present the biggest risk to safety of the general public on the railway. Network Rail's duty is to the public who use them and also to the passengers and railway staff who travel over them.

Despite a sustained country-wide campaign to educate people of the dangers of level crossings, deliberate and accidental misuse still remains high. Network Rail has evidence from all level crossing accidents which shows a clear relationship between the number of near miss events at level crossings and the number of accidents where a person is struck. The more near miss events that happen at a level crossing the more likely a serious incident is to happen. Therefore, closure represents the best option to improve safety.

Network Rail recognises that the closure of a level crossing can have an impact on the local community and we are committed to working with local authorities and stakeholder groups to address any concerns closure may create.

Having considered the respective levels of use of the crossing and the evidenced characteristics of existing users, it is considered that any adverse impact created by the proposed stepped footbridge will be insignificant and justifiable in this location for ensuring public safety.

Please see the attached DIA for further information regarding the level crossing and Network Rail's consideration of the Equality Act in respect of the proposed diversion.

DECLARATION

I/We

- (a) Understand that no authority for the extinguishment, obstruction or creation of any path or way in this request is conferred unless or until a Rail Crossing Diversion Order has been confirmed and come into force;
- (b) request that a Rail Crossing Diversion Order be made and confirmed relating to the crossing and paths or ways described in Sections 1 and 2 above; and
- (c) declare that, to the best of my/our knowledge and belief, all of the factual information included in this form is true and accurate.

Signed



Name in capitals
On behalf of

NICOLA MEE
Network Rail

Address

Floor 2
Cottons Centre
Tooley Street
London
SE1 2QG

Position held

Liability Negotiations Adviser

Date

22-03-2017