

**DOCUMENT NUMBER KCC21 – REGULATION PANEL REPORT DETAILING REASONS FOR MAKING THE ORDER AND THE COUNTY MEMBERS' DECISION REGARDING THE OFFICER'S RECOMMENDATION**

**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**



## **Application to divert part of public footpath CW80 from the 'at grade' foot crossing to a stepped bridge at Whitstable in the City of Canterbury**

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A report by the Head of Public Protection to Kent County Council's Regulation Committee Member Panel on Wednesday 26<sup>th</sup> September 2018.

### **Recommendations:**

- 1. The applicant be informed that an Order to divert public footpath CW80 where it passes over the 'at grade' foot crossing to a stepped bridge at Whitstable, Canterbury is declined.**
  - 2. The applicant be informed that an Order to extinguish public footpath CW80 where it passes over the 'at grade' foot crossing at Whitstable is to be made.**
  - 3. The applicant be informed that an Order to extinguish public footpath CWX40 which runs from Glebe Way to CW80 is made (as the extinguishment of CW80 will mean footpath CWX40 is not needed).**
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Local Member: Mr Mark Dance

Unrestricted item

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### **Introduction and background**

- 1. The County Council has received an application to divert public footpath CW80 at Whitstable. The application has been made by Network Rail, in the interests of safety, to remove the 'at grade' foot crossing from the railway line and to run the path over a stepped bridge (see **Appendix A** for a copy of the application). Notification of the intended construction of the new footbridge was submitted to Canterbury City Council's Planning Department in May 2017 (Reference CA//17/01178).**
- 2. The last risk assessment was carried out by Network Rail in October 2016, following which it was assigned a rating of C4, making it high risk (this is based on Network Rail's All Level Crossing Risk Model, ranking from A-M and 1-13 with A and 1 being the highest risk score). A number of incidents have been recorded at the crossing over the years including fatalities.**
- 3. The main concerns for Network Rail at this crossing are:**
  - a high level of usage, particularly by families/groups and encumbered walkers (it is estimated by Network Rail that it takes an average of 8 seconds to pass over the level crossing);**
  - sighting of trains - although distances are compliant, they may be obscured by fog, vegetation, 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, 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 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 and this has been taken into consideration as part of the risk assessment despite their scarcity to ensure sufficient time is provided for them to safely cross over the crossing;
- even if a user is able to see a train, its speed may be misjudged;
- a user may trip, fall or collapse in front of an approaching train;
- a user may attempt to leave the level crossing and walk along the track to retrieve an unleashed dog or due to another distraction.

In addition to the risk factors listed above, records show that there were 33 incidents of misuse, trespass and near misses reported between 1998 and 2016. Of these, 4 were fatalities, 5 near misses, 16 incidents of trespass, 2 equipment concerns, 1 suicide intervention and an accident where someone was hit by a train but not killed. There were also 4 incidents of trains being damaged due to objects having been either placed on the line or thrown near the crossing. The full incident log can be found at **Appendix B**.

4. An extract from the Definitive Map can be found at **Appendix C** to show the path in context with the rest of the public rights of way network.  
The plan at **Appendix D** shows the length of path to be diverted by solid black lines between points A-B and the proposed new route by bold black dashes between points A-C-D.  
Documents at **Appendix E** show plans of the bridge design. The bridge would have 36 steps on each side and the route would be 2.0 metres wide.
5. A copy of the application and Diversity Impact Assessment can be found at **Appendix F**.
6. Following an informal consultation on the diversion proposal (see paragraphs 12-20 below for a summary of responses), it was clear there was a large amount of opposition, not so much to the closure of the crossing, but rather to the bridge and the impact of that on the local community and environment. As the majority of people considered the level crossing needed to close, the County Council undertook a further consultation on a complete extinguishment of the crossing. A plan showing the extinguishment can be found at **Appendix G** and a summary of the extinguishment consultation responses can be found at paragraphs 33-39 below.

## Policy

7. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The main priorities in respect of Public Path Change Orders are:

Public Path Change Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order may be processed sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document;
- Where an application has been made to the County Council in its capacity as Planning Authority;
- Where the processing of an Order could save significant costs incurred in other Rights of Way functions;
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.

8. The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the Legal Tests section) for changing public rights of way must apply.

- I. The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
- II. The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use.
- III. The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
- IV. The definitive line should, where it is considered by the County Council to be reasonably practicable be open, clear and safe to use.

9. However, nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

## Legal Tests – Rail Crossing Extinguishment or Diversion Order

10. Legislation relating to the extinguishment or diversion of a public path which crosses a railway, otherwise than by tunnel or bridge, is contained within Sections 118A (extinguishments) and 119A (diversions) of The Highways Act 1980 ("the 1980 Act"). The Procedure is in Schedule 6 of the same Act.

(i) The Council may make an Order to extinguish or divert a public path if it is satisfied that it is expedient in the interests of the safety of users or likely users of at grade crossings.

(ii) particular consideration has to be given to whether or not it is reasonably practicable to make the existing crossing safe for the public and what arrangements will be made to erect and maintain barriers and signs at the closed crossing.

## Government Guidance

11. Rights of way circular (1/09) Guidance for local Authorities – also states:

Rail crossing extinguishment orders (section 118A of the 1980 Act), paragraph 5.48

"Section 118(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way."

Rail crossing diversion orders (section 119A of the 1980 Act) Para 5.51

"While other criteria are not specified in section 119A, the new way should be reasonably convenient to the public and authorities should have regard to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway."

## **Consultation to the diversion proposal:**

12. Consultations have been carried out as required by the 1980 Act:

### **County Member and Borough Councillors**

13. County Member Mr Mark Dance and Canterbury City Councillors Ashley Clark, Brian Baker and Bernadette Fisher were consulted. Mark Dance agreed with the proposal. Councillor Clark agreed with the proposal, but in a second email stated that, after listening to local people, and given the human tragedy that had taken place in this area on several occasions, the PROW across the level crossing should be terminated and *existing* bridges used. Councillor Baker stated he supported the closing of the crossing but not the construction of the bridge as this would blight housing and living conditions for many local residents.

### **Canterbury City Council**

14. Canterbury City Council was consulted. The Planning Committee passed the plans for the Network Rail bridge in terms of design and location, but at the same time a motion was passed instructing the Head of Planning to write to the County Council expressing its very strong opinion that the existing nearby pedestrian level crossing should be closed. The Committee, although granting prior approval for the proposed footbridge, did not express any strong desire for it to be provided as an alternative to the pedestrian level crossing. Planning Committee members noted that there were other routes, including an existing footbridge, that currently provide access for people who wish to walk from the south side of the railway towards the town centre or beach.

### **The Whitstable Society**

15. The Whitstable Society objected to the diversion proposal, firstly on the grounds of safety: steps are a hazard to many people especially in wet and wintry weather. An improved level crossing with lights and automatic gates would allow free passage to all. Secondly on grounds of convenience: the proposed bridge which will have 36 steps each side would be much less convenient to pedestrians who have difficulty using steps, i.e. those with heart, lung disease, arthritis, and problems with balance. Thirdly, the environmental impact: this is a conservation area. A bridge will be unsightly and exceptionally high, due to there already being an embankment. This is unacceptable to those who will be overlooked. Fourthly, cost: The Society felt it was extraordinary that the cost of an improved crossing was prohibitive when compared to a bridge. Finally, there is also a stepped bridge to the west of CW80 at a similar distance to the proposed bridge which could possibly be modified and ramped and be less intrusive. This would not alter the objection however. The Whitstable Society put forward an alternative diversion heading west and connecting to an existing bridge.

### User Groups

16. The Open Spaces Society, the Ramblers and the British Horse Society were consulted. The British Horse Society stated it had no comment to make on the application. The Open Spaces Society representative stated he agreed with the safety grounds, although strongly believes the existing crossing is perfectly safe if people follow rules and use their common sense. He considers the diversion would be substantially less convenient due to the number of steps up and down the bridge, however, he would not object in the circumstances. The Ramblers' representative put her name to the comments made by The Whitstable Society as detailed above.

### East Kent Area Public Rights of Way Officer

17. The PROW Officer responsible for the Canterbury area felt that the safety measures at the crossing needed to be reviewed following the tragic accident that resulted in a loss of life. She expressed concern at the amount of steps on the proposed bridge, which would affect access for certain users and even inhibit use of the route altogether by some members of the public as well as creating a trip hazard.

### Statutory Undertakers

18. No objections were received from any Statutory Undertakers who responded to the consultation.

### Kent County Council Traffic Schemes (Highway Services)

19. No response was received from Kent County Council Traffic Schemes.

### Local Residents

- 20a. One local resident objected to the proposal, stating it would create two long lonely alleyways. If unlit it would be dangerous; if lit, residents' homes could be lit up all night. Alleyways at night attract drug users and all sorts of anti-social behaviours and are very dangerous for people on their own. They felt it would be of no use to the disabled and worse for people with walking difficulties. A bridge would be an eyesore for local residents. They stated that proper automated gates are needed with visual and audio warnings.
- 20b. Another resident opposed the proposal as her property would be overlooked by the bridge and it would affect her privacy. She had been told that it would devalue her property by £50,000. She does not use the level crossing often but the steps up and down the new bridge would prevent her from using that.
- 20c. Another resident opposed the proposal, as whilst a bridge would obviously make for a safer crossing, it would also prevent those with mobility problems, mothers with buggies and cyclists from crossing. She suggested some sort of system like the green/red man on roads could be used to alert people to coming trains, and if a new bridge was to be built, it should be further up the line and with access for everyone.



20d. Two local residents who regularly use the existing crossing stated the only problem they have with it is the trains tooting on approach to it. When considering safety, they thought there could not be many accidental deaths of people crossing the railway here. They would not object, however, stating that if safety is the sole concern, then the only option is to close the crossing as convenience and enjoyment are overshadowed by even one accidental death.

20e. One resident strongly objected. She is a frequent user of the crossing, using it sometimes several times a week, in complete safety. She stated that the new very loud audible signal is impossible not to hear, well in advance of any train. She added that there was no reason for a footbridge to be built, but a stepped one would be extremely difficult to use for many people with limited mobility or with push-chairs etc. Although still fit and active, she now has to use a shopping trolley. She has no trouble getting this through the gates but would find it impossible to carry it up all the steps on the proposed bridge, which could risk her falling. The current route is far safer and quicker to the High Street than going along the main road with all the traffic and "dreadful pavements." The bridge would result in a loss of privacy for many homes either side of it for quite a distance. She suggested the only additional safety feature required could be a warning flashing light but considered the crossing was safe if used correctly.

20f. One resident supported the proposal, stating she felt it would be much safer for people and dogs.

## **The Case - the proposed diversion of public footpath CW80 at Whitstable**

21. In dealing with the application to divert a public right of way, consideration must be given to the following criteria of Section 119A of the Highways Act 1980: -

- a) Whether it is in the interests of the safety of users or likely users of at grade crossings
- b) whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- c) whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists a like right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it.
- d) whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.

22. To be taken into account but not listed as criteria under Section 119A of the Act but in Rights of Way Circular (1/09):

- a) Whether the right of way will be reasonably convenient to the public;
- b) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created.
- c) The effect that the diverted way will have on the rights of way network as a whole.
- d) The safety of the diversion, particularly where it passes along or across a vehicular highway.

23. Those criteria are considered individually and conclusions drawn below: -

a) *Whether it is expedient in the interests of the safety of users or likely users of the crossing.*

The last risk assessment was carried out by Network Rail in October 2016, following which it was assigned a rating of C4, making it high risk (this is based on Network Rail's All Level Crossing Risk Model, ranking from A-M and 1-13 with A and 1 being the highest risk score). A number of incidents have been recorded at the crossing over the years including fatalities.

The main concerns for Network Rail at this crossing are:

- a high level of usage, particularly by families/groups and encumbered walkers (it is estimated by Network Rail that it takes an average of 8 seconds to pass over the level crossing);
- sighting of trains - although distances are compliant, they may be obscured by fog, vegetation, 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, 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 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 and this has been taken into consideration as part of the risk assessment despite their scarcity to ensure sufficient time is provided for them to safely cross over the crossing; even if a user is able to see a train, its speed may be misjudged;
- a user may trip, fall or collapse in front of an approaching train;
- a user may attempt to leave the level crossing and walk along the track to retrieve an unleashed dog or due to another distraction.

In addition to the risk factors listed above, records show that there were 33 incidents of misuse, trespass and near misses reported between 1998 and 2016. Of these, 4 were fatalities, 5 near misses, 16 incidents of trespass, 2 equipment concerns, 1 suicide intervention and an accident where someone was hit by a train but not killed. There were also 4 incidents of trains being damaged due to objects having been either placed on the line or thrown near the crossing. The full incident log can be found at **Appendix B**.

Although not all, the majority of consultees agreed that the crossing was not safe. In light of the consultation and the reasons for the application, it is considered expedient in the interests of the safety users or likely users of the crossing that it should be diverted.

- b) whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.*

Following the tragic fatality of a 15-year-old girl in February 2015, the Coroner raised a number of concerns (see **Appendix B** after the incident log). Whistle boards were present at this crossing which provided users with a warning time of 9.8 seconds when the driver sounded his horn. It is not possible to relocate these to provide a greater warning time as they need to be sited within a certain distance of the crossing to be effective. In January 2016 an audible warning system called COVTEC was installed at the level crossing. 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. Although this has reduced the risk to users at the crossing by approximately 10%, this level crossing still poses a high risk.

Network Rail installed low level blue solar powered carriage lights in February 2016 along the edge of the crossing decking due to the absence of any dedicated lighting sited over the crossing.

Other measures, such as visual warning systems, vegetation clearance, permanent speed restriction and Miniature Stop Lights have also been considered in the application documentation, but Network Rail was not able to identify any other works that could be undertaken to improve safety of the crossing.

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.

- c) whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists alike right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it.*

The new route would not alter the point of termination of the path.

- d) whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.*

Network Rail would maintain the structure of the bridge and future maintenance of the surface of the footpath where it forms part of the bridge.

### ***Tests to be considered under Circular (1/09)***

#### ***24. a) Whether the right of way will be reasonably convenient to the public.***

From consultation responses, it is evident that this route is both a utility and recreational route. The proposed route would run over a new stepped bridge with 36 steps on each side. The existing route has a kissing gate at either side of the level crossing but is without steps or gradient. Consultation responses indicated that a stepped bridge would prevent some people from being able to use the route altogether. The time taken to traverse the bridge would increase journey time by about 3-4 minutes. The additional journey time was not a factor that people commented on, so this aspect is not considered to be substantially less convenient. However, the bridge itself is considered to be substantially less convenient. Canterbury City Council Planning Committee passed the plans for the Network Rail bridge in terms of design and location, but at the same time passed a motion instructing the Head of Planning to write to the County Council expressing its very strong opinion that the existing nearby pedestrian level crossing should be closed. The Committee, although granting prior approval for the proposed footbridge, did not express any strong desire for the proposed footbridge to be provided as an alternative to the pedestrian level crossing. Planning Committee members noted that there were other routes, including an existing footbridge, that currently provide access for people who wish to walk from the south side of the railway towards the town centre or beach.

#### ***b) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created.***

The proposal will have no impact on the land served by the existing right of way. However, although the new path will still all be within the ownership of Network Rail and will not specifically affect that land, the consultee responses indicate that many people consider there will be a negative environmental impact visually on the neighbourhood. In addition, it is considered the bridge will affect the privacy and property value of at least one property.

#### ***c) The effect that the diverted way will have on the rights of way network as a whole.***

The diverted way will have little impact on the rights of way network as a whole. The termination points are unchanged and there is relatively little added distance as a result. However, the bridge will possibly exclude some walkers who can currently use the level crossing.

#### ***d) The safety of the diversion, particularly where it passes along or across a vehicular highway.***

The safety of the new route over the stepped bridge has received negative comments and objection from some consultees, as steps can be a hazard in their own right, especially when wet or slippery. There is, therefore, a concern that the proposed new route running over the stepped bridge is not significantly safer than the level crossing.

## Further considerations

25. In addition to the tests set out in section 119A of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert a public right of way:
26. Under section 29 of the Highways Act 1980, the County Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna and geological and geographical features. In this case, there would be no adverse effect caused by the diversion of the path.
27. Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard "*so far as is consistent with the proper exercise of [its] functions, to the purpose of conserving biodiversity*". In this case, there would be no adverse effect caused by the diversion of the path.
28. Where the affected land forms part of an Area of Outstanding Natural Beauty ("AONB"), section 85 of the Countryside and Rights of Way Act 2000 requires that the County Council shall have regard to "*the purpose of conserving and enhancing the natural beauty*" of the AONB. In this case the land does not form part of an AONB and as such there would be no adverse effect.
29. Under section 17 of the Crime and Disorder Act 1998, the County Council has a duty to exercise its functions "*with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area*". In this case, there would be no adverse effect caused by the diversion of the path.
30. Finally, the County Council is subject to the public sector duty regarding socio-economic inequalities set out in section 1 of the Equalities Act 2010. Network Rail has conducted a Diversity Impact Assessment (see **Appendix E**). It is evident that the new route running over the stepped bridge will exclude a number of people from being able to use the route.

## Conclusion

31. In this particular case, it is considered that the tests under section 119A of the Highways Act 1980 (see paragraphs 23a and 23b above) are met. However, taking into consideration the tests to be considered under Circular 1/09 (see paragraph 24 above), the new route is to run over a high stepped bridge, which includes its own risks, and will exclude some members of the public that are currently able to access the existing route. Adding to this the environmental and other negative impacts mentioned above, it is considered that, on balance, an Order should not be made.

### The Case - the proposed extinguishment of public footpath CW80 at Whitstable

32. When it became clear that there was heavy opposition to the diversion over a bridge, but still support for the crossing to close, it was considered a consultation should take place on an extinguishment of the path, where no alternative was to be provided.

### Consultation to the extinguishment proposal:

33. An informal consultation was undertaken with all those who were consulted or who commented about the diversion proposal.

### Canterbury City Council

34. Canterbury City Council responded that its previous comments in relation to the diversion proposal apply to this (see paragraph 14) and that it supports the closure of the crossing.

### Canterbury City Councillors

35a. Councillor Ashley Clark responded, confirming that the Planning Committee at Canterbury City Council debated this issue in relation to the proposed bridge. As a result of that meeting and a unanimous expression of the Members, a letter was forwarded by the Head of Planning to the County Council intimating that the crossing should be closed and that existing routes would fulfil the needs of the public. He further commented that it is always regrettable when a PROW is closed, but human rights have to be balanced against human responsibilities. After much deliberation he was firmly of the view that the only responsible course of action would be for the crossing to be closed. The construction of a bridge would not be necessary given the alternative route via Alexandra Road to the foot bridge that leads directly to the causeway across the golf course which the majority of people use to access the seafront. A bridge would have caused problems in respect of overlooking and would not have enhanced the area. He specifically made the following observations:

- *This crossing dates from the epoch of steam when trains were noisier and slower and rails were not electrified. As such it is anachronistic.*
- *Like it or not this site is a place of human tragedy and sadness with multiple deaths over the years. We have to deal with the situation as it is and not as we might like it to be. Vulnerable adults have lost their lives here and a child, and the fact remains that we owe such individuals a duty of care. It will always be a fact that the young are not always blessed with the wisdom and experience of their elders.*

- *Victims in this case are not confined to those who have lost their lives and their relatives. One has to consider the train drivers, those in the emergency services and local people who may bear mental scars from the experience.*
- *Every year the authorities spend thousand in education, cctv and so on in trying to prevent persons trespassing on the railway for obvious reasons of safety but here we have a situation where we have created a gap in the fence with unrestricted access. This makes a total nonsense of what we are trying to achieve.*
- *The existing bridge crossing to the west is more than adequate for the majority of needs and affords a direct route to the seafront.*

35b. Councillor Baker endorsed everything that Councillor Clark stated and added that when the Railway arrived in 1841, Whitstable had few made-up footpaths and the roads were little better than muddy byways. The reason that a PROW exists at this point is because it was adjacent to the original temporary Railway platforms built as the line was being constructed and allowed users to access both sides. The first proper Railway Station was then built to one side of the bridge constructed over the junctions of Canterbury Road and Oxford Street. By the time that the present Station was opened between Railway Avenue and Old Bridge Road in 1911, the original temporary platform next to CW80/CWX40 had been already been removed as no longer required, but the Crossing remained as a PROW. There are other safer routes to go over or under the railway line and with all things considered, he is still of an opinion that this crossing and PROW should be removed.

### **Local Residents**

36a. One local resident strongly supported the closure of the crossing, stating that it is not safe. They live close to the crossing and have witnessed the aftermath of some of the tragic deaths that have occurred. They consider it is not necessary as there are other routes nearby.

36b. Another local resident also supported the closure of the crossing through extinguishment of the footpath, commenting that trains now are much faster and quieter than they used to be and there have been too many tragic deaths at this crossing. They also state that it is not far to walk around using the alternatives.

36c. One resident, who had objected to the diversion, also objected to the closure of the crossing as it would mean a long detour for her to reach the other side. She uses the current crossing frequently and considers there are no suitable alternatives.

### **User Groups**

37. The Open Spaces Society representative stated he would oppose the extinguishment of the crossing, as it will cause considerable inconvenience to many and believing it would be ignoring the interests of the majority.

### **East Kent PROW Officer**

38. The East Kent PROW Officer felt it would be a shame to lose the path, although she does understand how this has all come about.



## The Whitstable Society

39. The Whitstable Society stated it fully supports KCC's policy against extinguishments of paths and it notes the strong local opposition to the negative impacts of the proposed diversion over the footbridge. Its position is to support the closure of the crossing subject to an alternative footpath being provided, which they proposed should run to the west to link up with an existing footbridge, over which footpath CW53 runs. Whilst Network Rail carried out a preliminary investigation into the feasibility of such an option, due to the lack of support from local residents and the British Transport Police, it was not considered to be a viable option to pursue. However, in order to respond fully to the Whitstable Society's alternative route suggestion, Network Rail carried out a consultation exercise with the residents of Alexandra Road and the properties adjacent to the proposal on West Cliff. Out of 12 responses, only one did not object. A summary of the main objection points is as follows:

- Loss of privacy
- Increased risk to security
- Risk of anti-social behaviour increasing
- Loss of wildlife habitat
- Light pollution

In addition, other comments included that the diversion was not needed as there were already existing routes available. As a result, Network Rail rejected pursuing the proposal put forward by the Whitstable Society.

## Conclusion

40. In dealing with an application to extinguish a public right of way running over a level crossing, consideration must be given to the following criteria of Section 118A of the Highways Act 1980: -

- a) Whether it is in the interests of the safety of users or likely users of at grade crossings
- b) whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

41. Both of these criteria are dealt with at paragraphs 23a and 23b above and apply equally here.

42. Therefore, in this particular case, it is considered that the tests under section 118A of the 1980 Act (see paragraphs 23a and 23b above) are met. It became evident throughout the consultations that, with the exception of a small minority, this crossing is considered to be unsafe. Two diversion proposals have been explored and rejected for different reasons as explained above.

43. *Rights of way circular (1/09) Guidance for local Authorities* states:

Rail crossing extinguishment orders (section 118A of the 1980 Act), paragraph 5.48

"Section 118(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way."

If public footpath CW80 is extinguished, it will leave public footpath CWX40 as a cul-de-sac path, leading to nowhere for the public. Therefore, it is considered that section 118(2) of the Highways Act 1980 be applied here and for public footpath CWX40 to be extinguished at the same time.

## Recommendations

44. Therefore, the following are recommended:

- the County Council declines to make an Order to divert public footpath CW80 where it passes over the 'at grade' foot crossing to a stepped bridge at Whitstable, Canterbury, as per the original application.
- the County Council makes an Order to extinguish public footpath CW80 where it passes over the 'at grade' foot crossing at Whitstable and that the Definitive Map and Statement are amended accordingly.
- the County Council makes an Order extinguish public footpath CWX40 which runs from Glebe Way to CW80 (as the extinguishment of CW80 will mean footpath CWX40 is not needed) and that the Definitive Map and Statement are amended accordingly. The two extinguishments would form part of the same Order.

45. It is likely that the Order will attract objections. Therefore, it is further recommended that, if objections are received and the Order is submitted to the Secretary of State for the Environment, Food and Rural Affairs, the County Council will take a neutral stance at any Public Inquiry.

**Accountable Officer:**

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The case file is available for viewing on request at the PROW & Access Service, Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Please contact the Case Officer for further details.

### List of appendices

- Appendix A - Copy of application
- Appendix B - Incident Log & Coroner's Report
- Appendix C - Extract from the Definitive Map, sheet 207 (TR1065)
- Appendix D - Plan of diversion proposal
- Appendix E - Design of bridge
- Appendix F - Diversity Impact Assessment
- Appendix G - Plan of proposed extinguishment
- Case file - PROW/CW80/10/NR

