

**SECTIONS 119A & 120 – HIGHWAYS ACT 1980**

**KENT COUNTY COUNCIL**

**(Public Footpath SR49, Sevenoaks) Rail Crossing Diversion and  
Definitive Map and Statement Modification Order 2019)**

**PILGRIMS WAY LEVEL CROSSING**

**RAIL CROSSING DIVERSION ORDER 2019**

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**PROOF OF EVIDENCE OF DAMIAN HAJNUS, NETWORK RAIL**

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PINS REFERENCE: ROW/3201659

1. **Personal Details**

1.1 I, Damian Hajnus, of Network Rail, Basingstoke Campus, Gresley Road, Basingstoke, RG21 4FS, have been employed as Liability Negotiations Advisor from 2014-2017, and from 2017 as Liability Negotiations Manager.

1.2 My role is to advise the business on legal matters affecting its estate. This includes advising on the statutory and contractual responsibilities arising in connection with Network Rail's infrastructure and land estates. More specifically, where public level crossings are concerned, my duties include investigating and advising upon the legal status of level crossings, advising on the propriety of alternative crossing infrastructure, and pursuing the legal process for extinguishment or diversion.

2. **Scope of Evidence**

2.1 My proof of evidence addresses the overall basis for making, including the expediency of, the Public Footpath SR49, Sevenoaks) Rail Crossing Diversion and Definitive Map and Statement Modification Order 2019) ("**the Order**") (**Appendix 1**).

2.2 In particular, my evidence assesses the Pilgrims Way Level Crossing ("**the Crossing**"), reviews the level and character of public use of the Crossing, wider local footpath and roadway accessibility and connectivity (including the wider public right of way network in order to gain access to local facilities and destination points etc. and existing alternative pedestrian routes within the locale that exclude the Crossing), relative commodiousness, safety and convenience, etc. in specific and overall terms, the nature of the proposed diversion and the implications of the proposed diversionary route (incorporating the proposed extinguishment).

2.3 My evidence also outlines the relevant background to the formulation of the application and previous consideration by Kent County Council ("**the Council**"), and further provides an overview of Network Rail's regulatory and contractual position in relation to maintaining an efficient railway operation, including in relation to limiting the duration of temporary speed

restriction and Network Change on the railway network, in this case, in the context of level crossing risk and public nuisance.

2.4 Against the backdrop of risk mitigation measures, I consider governance within the context of safety promoting mitigations and optioneering. Optioneering, broadly put, is the process by which Network Rail considers whether it is reasonably practicable to maintain a crossing facility at a specific location by scoping possible risk-mitigating solutions, with regard to all relevant prevailing circumstances. Whilst all hypothetical 'options' are scoped, a focus of the optioneering process for the purposes of evidence is the evaluation of any option(s) that may be reasonably practicable at a given date, when considered against relevant assessment criteria and site-specific circumstances. My evidence includes the consideration of engineering and other options, including their relative convenience and accessibility, sometimes pursued by Network Rail in relation to level crossings in order to improve user safety, if reasonably practicable.

2.5 I consider the above within the statutory framework of sections 119A and 120 of the Highways Act 1980 ("**the 1980 Act**") with specific regard to public safety and all wider expediency matters. I then turn to conclude whether diversion of the footpath crossing the railway "*...is expedient in the interests of the safety of members of the public using it or likely to use it...*" and further, whether, in overall terms (i.e. "*having regard to all the circumstances*"), it is expedient for the footpath to be extinguished and for it to be diverted in the manner proposed. Here, pursuant to section 119A(4) I have particular regard to: (a) whether it is reasonably practicable to make the Crossing 'safe' for use by the public, and (b) what arrangements have been made by Network Rail, etc. for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

2.6 My evidence should be considered in conjunction with the proofs of evidence of my Network Rail colleagues, Jeremy Greenwood and Gemma Kent.

### 3. **Introduction**

3.1 An application was made to the Council under s.119A in the first instance, but was refused. The circumstances of that refusal decision are briefly scoped in my evidence. The onward application has been made to the Secretary of State in the light of that refusal, pursuant to s.120, having regard to s.119A.

- 3.2 The Crossing is located on the Swanley to Ashford line (SBJ), at 24 miles and 14 chains. It has a public footpath status and crosses a double-track, electrified railway line. There are footpath stiles in situ either side of the Crossing.
- 3.3 A high frequency of timetabled trains (being 153, running 24 hours per day) pass over the Crossing each weekday, and presently travel at speeds of up to a temporary speed restriction (“TSR”) of 40mph. This was a speed restriction introduced in 2015, and only in order to mitigate, albeit as an interim measure only, the assessed safety risk presented to the public at the Crossing and to ensure compliance with relevant standards. Before the implementation of the TSR, the line speed at the Crossing had been 70mph.
- 3.4 In addition to scheduled train movements however, there are also unscheduled freight and engineering train movements.
- 3.5 A 9 days census was carried out on behalf of Network Rail in October 2020, coinciding with the enforcement of various Covid-19 lockdown restrictions. The census information gathered was then closely interrogated by Network Rail, the detail of which is spoken to by my colleague, Ms. Kent.
- 3.6 The highest daily level of use so far recorded at the Crossing has been 281 pedestrians. This characterises a very high level of use. The average daily use as evidenced by the census information similarly typifies a very high level of use.
- 3.7 Moreover, of high relevance to the assessment of the nature and character of the use itself, a very high number of vulnerable users (and also some encumbered users) was identified throughout the census period.
- 3.8 It is considered that the census data, and census period, provides a reliable indicator of the nature and character of those who typically use the Crossing.
- 3.9 The clear focus of section 119A is public safety: subsection (1). Expert evidence assessing the existing public safety risk, even when taking account of the TSR, is addressed by Ms. Kent. Ms. Kent’s evidence is supported by the relevant ALCRM scoring and Narrative Risk Assessment (“NRA”) for the Crossing. I do not rehearse here, but confirm having had full regard to the findings of both of these important, updating assessment processes.
- 3.10 For the purposes of section 119A (4) and “*all the circumstances*”, with regard to the Crossing such circumstances include:

- 3.10.1 A very high and unacceptable level of risk posed to public safety by use of the Crossing, having regard to the frequency of train movements, the profile of a very high number of users (incorporating vulnerable and encumbered users), historic incidents, and national trends known to Network Rail;
- 3.10.2 The non-compliance of the Crossing in sighting deficiency terms, in the context of both vulnerable and encumbered users, in connection with trains operating at a speed in excess of the TSR but well within the aspirational speed limit of 70mph, which is intended to be reinstated;
- 3.10.3 Other geographical and topographical circumstances that emphasise unacceptable hazards which endanger users of the Crossing, even when trains are passing at no greater speed than 40mph;
- 3.10.4 The prejudice caused to the strategic objective of promoting operational efficiency, by virtue of the TSR, which in effect has had to be imposed because of the unacceptable Crossing risk and continued unsafe public use of the Crossing;
- 3.10.5 The usability of one or more alternative routes, including the proposed footbridge;
- 3.10.6 Relative convenience (assessed by Network Rail to be of an insignificant level, in overall terms) being caused to existing users by virtue of the diversion; and
- 3.10.7 Overall relative safety, commodiousness and usability, etc. of the local rights of way and roadway network, affording alternative pedestrian routes (whether step-free or otherwise), having regard also to accessible amenities and facilities local to the Crossing.

#### 4. **Locality and main walking routes**

- 4.1 The consideration of relative inconvenience to existing pedestrian users of the Crossing naturally involves the identification of basic local amenities, principal destination points, existing communal links served by the Crossing as well as any nearby walking routes along or involving points of particular amenity.
- 4.2 With the exception of some areas of green space, the clear majority of Otford village's

recreational, retail and service amenities and destination points are located to the west of the railway<sup>1</sup> line. These are conveniently accessible by two main roads: High Street and A225. These are marked at **Appendix 2**. There is also a good network of paths which lead to, or serve, these roads. The largest residential area and greater density of housing (than east of the within Otford is situated west of the railway, and east of A225. This part of the village is also served by a comparatively denser network of public paths, which are step-free throughout their length (save for some but infrequent, (shallow) kerbing which is nonetheless closely neighboured by crossover/step-free access). These public paths are characteristically wide and reasonably aesthetic.

- 4.3 Within this locality there is clear opportunity for pedestrians to avoid much, or all, of the footway network that runs adjacent to the roadway (e.g. along Station Road, including the train station overbridge), if the choice is taken up.
- 4.4 Local topography is notably characterised by a conspicuous, gradual elevation, running west to east. It rises considerably, by approximately 100 metres, within 1km east of Otford station. This is partly exemplified by the raised approach of A225 where it crosses over the railway line, by the station, and also by the stepped access on from A225 to the station. The pedestrian usability of the (intermittent) footways that run adjacent to roads, including along the A225, will be viewed in this very appreciable context.
- 4.5 The village is served by a network of footpaths (e.g. FP48, 49, 49A) which are generally well-maintained, with a relatively even surface and navigable gradient, throughout or for the far majority of their lengths (albeit some relatively short sections do disclose lesser made up surfacing: e.g. parts of FP48), with various accessible entry points (whether these entry points are step-free, or closely neighbour traversable kerb crossovers), save for some stiles features (e.g. along part of FP49). These footpaths are also of a characteristic width for such ways, and none so narrow as to prevent or discourage use, or give rise to untraversable pinch-points.
- 4.6 These footpaths flow through, to, and are punctuated by, relatively dense housing, within relatively close proximity to the Station, both to the West and East. This notably close

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<sup>1</sup> Exceptions of note include St Michaels Preparatory School, Chalk Pit and Oxenhill Shaw

integration also provides for significant overlooking and superintendence of much of the footpath network, albeit many sections retain an aesthetically distinct and inviting experience, alongside appreciable green planting. Unsurprisingly, periodic vegetation cutback is seemingly required at some sections, without any issue arising.

- 4.7 The footway sections located around and on approach to the station, as well as within its boundary, are of locally characteristic and perfectly adequate width (circa. 1.4m on the A225 bridge) for this locality. They disclose a good, even surface with no protruding obstacles or impediments (e.g. uplifting, roots or significantly protruding furniture). The footways are accessible, raised (in relation to the road, and in conjunction with the notable incline, from West to East) and separated from the road by adequate kerbing.
- 4.8 Whilst footways are not fully continuous on any one side of the road within the relevant locality, whether closer to the Crossing or within the village. There is however, again, within the relevant locality, always footway along at least one side of the road at any given section, whether or not that footway is slightly set back from the roadway (e.g. section further north of the A225 station overbridge). Moreover, at and adjoining the approaches to the station overbridge, there is a continuous footway – again, of a characteristic, adequate width and gradient – along the side nearest to the station, meaning that a choice of stepped access or step-free access from the A225 (whether when walking down FP48, or down station approach), walking North-South.
- 4.9 There are also however significant stretches of roads within the village (and also along the A225 – e.g. West of station approach) that are without footway. On the A225, within the vicinity of the Crossing, the footway discontinues on the southern side of the road where it is intersected by Station Approach. A pedestrian crossing is provided, and there is a continuous footway on the other side of the road, towards the centre of the village. An absence of footways, non-continuous footways and varying width are features commonly found within areas such as this.
- 4.10 The main road to the north of the Crossing is the A225 (Station Road), which is served by step-free and stepped access points, runs on the slope towards the village (East to West), following a bend. The line of sight for vehicular traffic that approaches the overbridge, from

North/South is relatively good (and certainly adequate), with the downward curve notably reducing in this travelling direction upon closer approach to the overbridge, meaning that the driver does not ‘suddenly come across’ the overbridge. It is well sighted. I have estimated that the line of sight of approaching cars, for pedestrians wishing to cross the road at the point of crossing, can be as much as approximately 100m (looking east towards the curve), inevitably depending upon the extent of any queueing traffic. There is also continuous footway, adjacent to this vehicular direction (i.e. closest to the station).

- 4.11 Separately, the line of sight for vehicular traffic, approaching the overbridge, from South/North is good, and the road curve develops after (not before) the overbridge section. At and immediately around the overbridge, the curve is not particularly acute, and the bend at this point (or indeed further along) is far from being a ‘blind’ one. The road has a 30mph speed limit, and the road includes highly visible ‘slow’ markings for drivers. I know of no proposals for the implementation of any specific or further traffic intervention or management measures or infrastructure. Also, according to Crashmaps.co.uk online reporting, the stretch of A225 between the eastern approach to the railway bridge (as shown) and Station Approach junction has been the site of 4 accidents in the last 22 years (**Appendix 3**). These are briefly considered below.



*Locations of all reported accidents from Crashmaps.co.uk*

- 4.12 It may reasonably be assumed that a significant proportion of pedestrian journeys involving the Crossing would be East-West (towards e.g. Otford Primary School, local shops, services, green spaces or places of worship, etc.), especially from or to Tudor Drive, accessing the residential estate served by FP49. There is little basis to assume any significant proportion of journeys from South to North would involve use of the Crossing, perhaps to a lesser extent the A225 bridge. The only local facility situated north of A225 is Russell House

Preparatory School, perhaps for a leisure walk route, but there are no public rights of way or any apparent attractions north of A225. This is similar to the south of A225 and the station.

4.13 In light of this assumed, predominant direction of travel for pedestrians currently using the Crossing, the Inspector will note that separately from the proposed diversion, there are two main alternative routes available<sup>2</sup>. These are examined in detail below.

## 5. **Proposed Diversion and Alternative Routes**

5.1 The footbridge is proposed to be constructed approximately 20 metres north of the Crossing. Small sections (circa 10 metres) of footpath is proposed to be built at either side of the Crossing as approaches to the footbridge. The layout of the diversion is shown on the Order plan in Appendix 1.

5.2 The proposed footbridge structure has been granted planning permission. It would be designed and built in accordance with the current applicable standards, ensuring its fitness for purpose, safety and commodiousness. It is considered that the footbridge shall, for significant proportion of the current users of the Crossing, present a material betterment both in terms of safety and also convenience of use.

5.3 On approach to the Crossing, FP49 is furnished with stiles. These stiles are purposely erected, and are permanent installations. These obviously have the effect of reasonably excluding altogether, access by various types of less physically mobile pedestrians. In many cases, the stiles will also strongly discourage occasional use by others, including encumbered users (a category which includes those who are carrying, pushing or pulling heavy or bulky objects).

5.4 Hence, access to and usability of the Crossing is already limited for some, whether permanently or transiently.

5.5 The design of stiles have also been constructed to a very different and far more rudimentary standard, than that which govern bespoke design schemes for footbridge construction. By

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<sup>2</sup> Both were also discussed in section 16 of the Statement of Case.

their design, stiles inherently require of the user a not insignificant degree of physical agility in order to pass over – and especially when doing so in any appropriate manner. A user must, inevitably, be physically able to raise their knees/legs, and also, far higher than is the case when traversing the riser height of each step of a footbridge. The stile user must also be able to descend from a comparatively far greater height and also maintain their balance when ‘grounding’. At the Crossing this height has been measured as varying between 27cm and 29cm, which appears to fall squarely within the design guidance issued by local authorities<sup>3</sup>. Contrastingly, the riser height of a stair on a footbridge should not exceed 20cm<sup>4</sup>, on a worst-case scenario for a location such as this. Moreover, in the worked examples of a footbridges recently constructed by Network Rail in lieu of a level crossing, these values have ranged from a considerably lesser height: from 16cm<sup>5</sup> to 16.5cm<sup>6</sup> (which is exemplified by design drawings in **Appendix 4**). This is therefore appreciably lower than the relevant comparative traversing heights in connection with the stiles. This must be borne in mind when considering the relative mobility and accessibility of users of the Crossing and of the proposed footbridge.

- 5.6 In strong contrast to a stile, a stepped footbridge is very much designed to ensure the safety of the traverse, for relevant users. For example, there is negligible, if any, risk of a user missing a step, with each step (quite unlike a stile) having a continuous and even surface spanning the entire width of the stairwell. The width of the stairwell provides for ample passing, if required, as well as for users who may be carrying or lifting items. Surfacing is covered entirely with anti-slip surface. The design provides for standing resting places and also the use of a stabilising handrail throughout, with the continuity of the flights of steps being punctuated by multiple, deep, landing areas. The nosing of each footbridge stair is also purposely distinct from the stair itself, with the strip of anti-slip material forming the nosing being painted brightly (typically yellow) thereby offering the user a set of clear points of reference when using the stairs. Stairwell lighting is subject to design yet Network Rail designs and implements low level lighting which, whilst illuminating the stairwell (and the

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<sup>3</sup> E.g. Kent CC or Hants CC recommend the rises not exceeding 30, 30 and 45cm for consecutive steps

[https://www.kent.gov.uk/data/assets/pdf\\_file/0016/5137/stiles-design-standards.pdf](https://www.kent.gov.uk/data/assets/pdf_file/0016/5137/stiles-design-standards.pdf)  
<https://documents.hants.gov.uk/countryside/designstandards-stiles.pdf> (**Appendix 6**)

<sup>4</sup> Recommended range of 15 to 20cm under BS5395-1 (**Appendix 7**)

<sup>5</sup> Wool Footbridge, Dorset

<sup>6</sup> White Hart Lane footbridge, London

span) of a footbridge, emits minimal amounts of light into its surroundings thereby minimising potential light pollution.

- 5.7 The Crossing will inevitably be more challenging still for the less physically mobile, when attempting to climb down. Stiles invariably offer only a single narrow step which means that a user must put their foot directly on the step of the stile. Missing the step even slightly can predictably result in a considerable fall, and especially during periods of poor light and/or during wet conditions underfoot. To traverse the stile, a user must be able to balance their body throughout the entire duration of the manoeuvre, having only two vertical posts for support. On FP49 these are short (circa 40cm) timber posts attached to more substantial, timber, columns.
- 5.8 Again, in strong contrast, a footbridge is fitted with “warm to touch”, cylindrical handrails. The relevant standard<sup>7</sup> dictates that these “shall be provided on both sides of stairs”<sup>8</sup> and their height should be “no less than 900 mm or more than 1000 mm measured vertically above the surface of a ramp or nosing of stairs”<sup>9</sup>. The bespoke design also facilitates the ease of use by “disabled people and children”<sup>10</sup> by enabling an *additional*, lower handrail (at 450mm to 550mm). A standard handrail is ordinarily painted in a bright colour (typically orange or yellow – see example below) so it is clearly, visually distinguishable from the (grey or green) footbridge in the background. In contrast, the vertical timber posts on the stiles at the Crossing can become indistinguishable from the background, especially in poor light or darkness. Another risk can be associated with increased propensity for weathering and,

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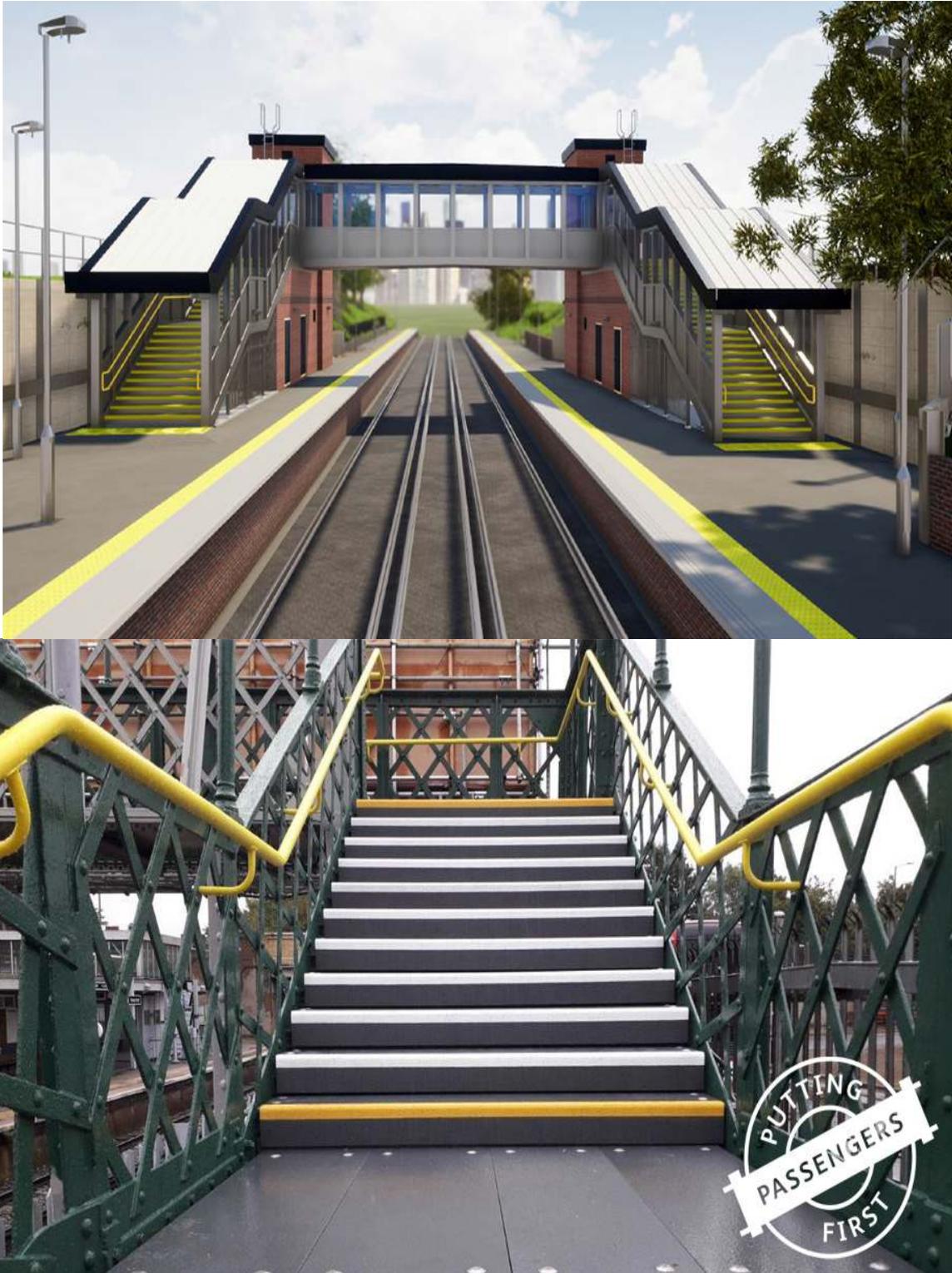
<sup>7</sup> Design of Bridges NR\_L3\_CIV\_020 (Appendix 8)

<sup>8</sup> Ibid at 48

<sup>9</sup> At 49

<sup>10</sup> Also, by reference to BS 8300: Design of buildings and their approaches to meet the needs of disabled people [now superseded by BS 8300-1:2018 Design of an accessible and inclusive built environment. External environment. Code of Practice] (Appendix 9)

eventually, failure of timber elements making up the stiles. This phenomenon will not affect the elements of the footbridge in the same manner.



5.9 Such features of the footbridge offer fundamentally safer and more convenient means of traversing the railway than the Crossing, also provide ample support and an opportunity to rest, which is evidently absent in the current set-up. This remains true also in the hours of

darkness, the footbridge, again – unlike the Crossing, is lit, any opportunity for an accident is therefore further mitigated. It is therefore not the case that the Crossing could reasonably be said to be preferable or a more attractive option, still less significantly so, than the proposed footbridge from the standpoint of, say, a person with a buggy or wheelie trolley/bag.

- 5.10 It is recognised that, in relative distance terms, there may arise a perceived or actual inconvenience in connection with having to use the proposed footbridge, by some users, including those who may find it comparatively unattractive or difficult to walk the (net) increased distance, when compared with the Crossing. This inconvenience (or inability) must however be viewed in the context of the relative shortness of this net increase in distance: the increase from points (e.g. from points A to C to D to B on the Order Plan is measured at approximately 55m).
- 5.11 In hypothetical absence of the Crossing, the additional journey distance over the proposed footbridge (additional c.55m) is not likely to translate into a significant additional journey time, especially in overall journey length terms.
- 5.12 This inconvenience (or inability) must also be viewed in the context of the physicality required to access, and also make use of the Crossing. This can immediately be contrasted with the physical ease of traversing the footbridge, as discussed above.
- 5.13 With regard to any inability or difficulty in traversing the number of stairs on the proposed footbridge, and in light of the possible cross-section of local demographic, comments raised in representations made to the Order and Network Rail's own user census data, it is considered that the specific groups of users with characteristics (whether statutorily protected or otherwise) most likely to experience an increased difficulty (or inability) in using the proposed footbridge are elderly members who are relatively immobile or frail, the disabled (including the blind and partially sighted), and those who are pushing buggies<sup>11</sup>.
- 5.14 Turning to the two former categories of users. As an inevitable consequence of aging, one's ability to walk additional distances or to climb flights of stairs becomes materially reduced.

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<sup>11</sup> Two latter groups are discussed in 8.16 -8.20 below

This is no less a consequence however with regard to traversing a footbridge or approaching or making use of the Crossing. Further, whilst there might be a proportion of current users of the Crossing 'in the autumn of their years', who fall within the broad category of "age", who consider themselves able to traverse the stiles but may, as a matter of physicality, find it challenging to traverse the additional distance and stairs of the footbridge, there is no hard data of this proportion of users.

- 5.15 In light of the above comparative discussion of the physical approaches to the Crossing in contrast to the footbridge, it is not considered that the number of those who may be physically able to traverse the Crossing, but physically unable (and not merely disincentivised) to use the proposed footbridge, will encompass any significant number of users. The differential is considered to be relatively modest, and certainly modest in overall user terms.
- 5.16 Moreover, even if this number were ever significant, in any event, this is not at all to suggest that use of the Crossing by such individuals (of a physical inability to use the proposed footbridge) should properly be considered to be safe, or appropriate. This conclusion may or may not coincide with the user's own understanding, but Network Rail's assessment of user safety properly is one of expert objectivity. The undisputable relative safety of the footbridge, in contrast to the Crossing, is borne out by the fact that the potential for a pedestrian/train strike will be eliminated. To add, a public user will also no longer be restricted by train movements (153 times per day). Hence, any significant number (which is not considered to be the case, in any event) should, in turn, not attract any significant weight in the wider expediency balance under s.119A(4).
- 5.17 In addition to the comments received by those objecting to the Order, Network Rail has also had regard to a distant indication given by the 2011 ONS National Census data which shows that out of the then total population of 4595, only 236 residents of Otford had declared that their "health limited their activities a lot". It is inevitable speculation regarding whether any such 'limitation' of 'activities' includes the ability to walk additional distance of the diversion route or to traverse stairs.

5.18 Acknowledging that some difficulties may well be experienced by those physically able or unable to use a footbridge, but also, notably, that the Crossing (including the stiles and 11 steps on Downside) is not step free, it is significant that step-free alternative routes nonetheless exist today. These routes will remain entirely unaffected by the proposed closure of the Crossing, diversion and installation of the footbridge. These are discussed below.

### **Step-free routes**

5.19 The *accessible* alternative for those wishing to access the village centre and its facilities from (say) Tudor Drive, leads on FP48 towards A225. Conditions underfoot are good; the surface is metalled and generally even. The footpath, characteristic of the locality, is unlit and its final leg (approx. 90 metres) is on a very gentle slope (circa 2 metres over 90 metres). FP48 ends where it is intersected by A225.

5.20 The footway along A225 at this point is of generous for a locality such as this, width (c.1.4m). It is even and comfortable. It leads towards the junction with Station Approach down a noticeable gradient (estimated 5-6 metres of descent over some 94 metres). After Station Approach the footway continues on the opposite side of the road. A user wishing to continue their journey towards the village centre has two options: to cross the road on a pedestrian crossing present just before the junction with Station Approach and to continue on the footway along A225, or; to take a sharp turn left into Station Approach and to continue on its footway and across the car park to FP49.

5.21 The former option requires crossing the road. A225 at this location has a speed limit of 30mph and the road is fitted with signs warning of pedestrians (signs on the railway bridge and painted on the surface). The crossing is clearly marked and equipped with a visual warning (a light) to ensure that drivers receive adequate warning in all conditions. The sighting of approaching traffic at this (Station side) location for a pedestrian wishing to cross the road is ample. This is despite the fact that the road (on approach to the railway bridge from North East) is on a slope and a curve. The slope does not give rise to a blind spot for pedestrians, the approaching cars are visible from approximately 100 metres away (where they come out of the bend towards the bridge: see discussion above) but, as noted above,

the view of approaching cars may occasionally be obscured by the east-moving traffic. At 30 mph, even a restricted sighting, provides a driver with sufficient time to react safely and to stop completely, if necessary.

- 5.22 Without distinguishing between specific locations within Otford, upon selecting arbitrarily two notional terminae for a given journey (e.g. to reach amenities in the village centre); *from* – Tudor Drive between FP48 and FP49, and; *to* – Duck Pond Roundabout (a nexus point for most journeys to High Street or the facilities located along the southern stretch of A225) , the total distance along this route is 705 metres, against 692 on FP49 across the Crossing.
- 5.23 There is nothing to suggest that A225 at this location is unsafe. There is no evidence known to me that there are some location-specific attendant dangers that would give concern to the local highways authority. Risks to pedestrians are mitigated by speed limit, signage and clear marking of pedestrian facilities. The footway is wide enough to allow pedestrian to pass one another, even under the current social distancing regime. It has a kerb and is clearly separate from the road. Crashmaps.co.uk report only two serious incidents at this specific location in the last 20 years, none of which involved pedestrians; one 2-car collision and one involved a cyclist and a car i.e. both using the road rather than a footway. The only recorded incident involving a pedestrian occurred on 2<sup>nd</sup> March 2010, was categorised as “slight” and this pedestrian was in fact reported as walking in the road (Appendix 3).
- 5.24 The other step-free alternative leads along the same route as above, instead of crossing A225, pedestrian makes a near u-turn, into Station Approach, across station car park towards FP49. One potential risk which can be encountered is in traversing the car park. There is however no reason to expect any high volume of traffic here bearing in mind the purpose of the facility and the fact that it is not a through-road. Network Rail considers further mitigating *any* such risks by provision of a demarcated walking route there.
- 5.25 This route is significantly longer than the route on FP49 over the Crossing (c.980 metres) yet, along an even and good surface, this translates into an additional estimated journey time of just 2 minutes 30 seconds.

- 5.26 This very short, bolt-on duration in walking time must also be viewed in the context of an overall journey time, which will further reduce the significance of the additional duration.

**A “Purpose journey” example – reaching Otford Station**

- 5.27 Some objectors comment, seemingly as a feature of overall accessibility, that those who manage the stiles but would be unable climb the footbridge, would in effect be deprived of convenient means of gaining access to platform 1 for London bound trains. However, the step-free alternative is already present, and is set out above: this leads along FP48, over the railway bridge (A225) and to the station and is c.30 metres longer than the route over the Crossing and FP49 (365m versus 337m). Such a difference is considered to be negligible and unlikely to impact, in any meaningful way, a journey to the station. For this reason alone, I do not consider such objector comments to be persuasive.
- 5.28 In similar fashion, for those living east of the railway line (say, at Evelyn Road) accessing platform 2 for country bound trains, a step-free route inevitably involves traversing the same route, albeit in the opposite direction and on the gradient of Station Road, then along FP48, and the ramps leading down to the platform.

**Diversion Route and Alternative Routes as part of ‘Expediency’**

- 5.29 Having properly considered factors relevant to addressing the wider “expediency” question, the conclusion which inevitably follows is that the Crossing provides no material, if any, convenience, still less for any significant proportion of the local public.
- 5.30 This view is firmly founded on an objective assessment which takes into account the alternative distances, journey times and relative accessibility (with regard to multiple factors) of the proposed diversion and the suitable and safe existing alternative pedestrian routes. These are properly appraised in the wider local landscape, and with regard to the siting of local amenities, facilities and destinations vis-à-vis the location of predominant residential areas in relation to the railway line.
- 5.31 Convenience is also something to be viewed in respect of purpose of users who are (say)

carrying out a task or visiting a facility or amenity for that purpose, as opposed to the 'leisure user'. The function is also to facilitate 'purpose use – for example, for those travelling to school, station or the amenities in the village centre.

- 5.32 This is corroborated by the data collected during the 2020 census<sup>12</sup> at the Crossing showing a relatively high proportion of children (354 out of a total of 1887 crossings) and an overwhelming majority of use (1247 recorded crossings) by adults. Even assuming that the totality of this use is non-leisure and that convenience as an aspect of "expediency" applies, these user groups are not likely to be inconvenienced in the absence of the Crossing, still less materially. The 2020 census makes a point of distinguishing, across all user groups, those with mobility impairments (e.g. requiring a walking aid or carrying something). This evidence is collected from the census footage rather than from stills which speaks to the acuteness of observation. Out of the 1887 users recorded, a total of 76 was either encumbered or was using a walking aid, 203 were classified as "elderly". Consequently, even hypothetically assuming the *all* of these users would find the footbridge challenging (which should not be the case), the overall proportion of users *potentially* inconvenienced in this way would not be significant.
- 5.33 When viewed objectively and in the context of alternative routes available, the Crossing is notably *the least convenient* and also is one of *the least accessible* means of traversing the railway.
- 5.34 The Crossing is also – by clear margin, and beyond rational argument – the most hazardous, noting that any pedestrian user of the Crossing will be subject to frequent (scheduled and unscheduled) train movements within a very unsafe environment.
- 5.35 Just as plainly, the Crossing is also the *only unsafe* route. There is no credible suggestion that any other pedestrian route should now close, or now requires interventions or mitigations in order to render it safe.
- 5.36 From this perspective therefore, clear *betterment* arises, one that also has fundamental importance in s.119A terms, if existing users of the Crossing are now required to 'switch' to the diversion or, alternatively, to one or more alternative routes, if they do wish to cross the

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<sup>12</sup> Discussed in detail in Ms. Kent's proof

railway.

6. **The 'efficient' running of the railway network**

- 6.1 As Mr. Greenwood more fully explains, Network Rail operates in a complex and strict statutory, regulatory and contractual environment. One of its core obligations flowing from the Operating Licence is to run, broadly, a “safe *and efficient*” railway network. Fulfilling this fundamental duty means principally that the network must be safe, fit for purpose, properly maintained with risks mitigated and enhanced where possible. Also, critically in the present case, it must be run at [or as near as achievable to] capacity.
- 6.2 One of the key factors defining the capacity and efficiency of any railway line is line speed. In railway terms, line speed is not a mere restriction, but rather an operational aspiration. For example, in order to ensure reliable service and manage tightly timetabled train movements, rolling stock is expected to achieve maximum line speed, wherever possible.
- 6.3 The original line speed at the Crossing was 70mph, confirming that the railway infrastructure at this specific location, is capable of sustaining this speed without compromising the safety of railway operations. The attainment of this speed is to achieve operational efficiency.
- 6.4 The local train network connects Kent with London, and therefore with some of the busiest railway stations in the UK. This section of network is very busy and runs on a very tight timetable to enable the best service achievable for passengers.
- 6.5 The regulatory duty to enable trains to run at the operationally efficient speed, is reinforced by a series of initiatives and partnerships which include Track Access Contracts (TAC), being agreements entered into by the Department for Transport with train operators and which, broadly stated, impose an obligation on Network Rail to maintain the network in order to ensure uninterrupted train service and which set out strict performance regimes, carrying significant and unavoidable financial penalties for default. The payment of financial penalty by Network Rail is, if indirectly, an expenditure of the public purse.

- 6.6 One such contractual mechanism is as set out in Schedule 8 of most TAC's ("Performance Regime") which provides for significant compensations for "delay minutes" payable by Network Rail (again, if indirectly, from the public purse) to train operators. These payments are calculated, per minute of delay, in each direction and can, and often are, in the region of £90 per single minute of delay, in a single travelling direction.
- 6.7 This compensation mechanism also encompasses delays that are caused by the unarguable impediment presented by a TSR being imposed by Network Rail. These restrictions almost always have very significant impacts on train operations, and separately have adverse knock-on effects on timetabling for the interdependent and wider network.
- 6.8 In reinforcement of the clear operational merit of removing speed restrictions from the network, Southern Region (which encompasses the Crossing) has been pursuing a localised programme concerned with removing such restrictions. For strategic financial planning purposes alone, the financial efficiency gained for each TSR removed has been benchmarked at £50k (albeit the figure will necessarily vary, depending on the complexity of the site-specific circumstances and the level of investment required to remove the TSR, and so may well exceed this benchmark). For example, only in order to deal with TSRs brought about by track geometry issues, Network Rail has invested £3.6m. This figure has to be seen against the expected efficiency realised of £4.5m.
- 6.9 The relevant section of the railway line located near to the Crossing saw the introduction of what has proven a significant TSR (of 40mph, a reduction of 30mph), as a precautionary but strictly temporary measure; being the only means at the present time – pending this application diversion – of ensuring two important, operational-specific matters: (a) compliance of the Crossing with relevant operational standards, including sighting (as Ms. Kent comprehensively assesses in her proof of evidence); and (b) allowance for the removal of whistle boards as to cease (and prevent) the commission of a public noise nuisance. This noise nuisance has already been robustly assessed by the appropriate enforcing authority, and so its occurrence is well-established at this site in consequence of horn-sounding by passing trains (see **Appendix 5**). As such, the whistle boards cannot appropriately be reinstated. It is not reasonably or lawfully open to Network Rail to permit a public noise nuisance, and moreover, to risk criminal prosecution for doing so. Accordingly, the whistle

boards cannot and will not be reintroduced.

- 6.10 Consequently, at this present time, the TSR still cannot be lifted, and the speed of 70mph (and with it, an optimal level of operational efficiency) cannot be realised – unless and until the Order is made.
- 6.11 Yet, both of the above operational-specific matters can readily be met, the risk to public safety can appropriately be eliminated, and operational efficiency can be regularised, upon enabling the reintroduction of the 70mph speed limit – if the Order is made.
- 6.12 Only the making of the Order can achieve *all* of these matters.
- 6.13 Indeed, with regard to the Crossing and relevant section of the railway, *only* the making of the Order achieves public safety and operational efficiency.
- 6.14 It is certainly not incidental that with regard to the Crossing, in conjunction with the removal of the temporary 40mph speed limit, the provision of a bespoke solution (a footbridge) has been assessed as being entirely appropriate from both the risk to the public, and performance of the network perspectives.
- 6.15 It is both Network Rail's and the train operating company's firm aspiration to see restored, the original line speed of 70mph, expeditiously. This is not only to allow (the 153) trains running through Otford to move at greater, permissible speed than at present, but also, as a matter of obvious and prudent management of public infrastructure, to ensure that the network is prepared to perform and work at capacity to accommodate any future increase in the frequency or speed of train services.
- 6.16 This capacity exists today, but in the circumstances of the Crossing, is required to be 'unlocked' by the making of the Order.

## 7. 'Option' Costs and Network Rail Budgeting

- 7.1 The above underscores why Network Rail's s.119A application had evidently been driven by a justified imperative to proactively manage the risk to public safety which the Crossing

presents, combined with the regulatory (strict) requirement and a contractual obligation towards the train operators, to maintain an *efficient* railway network which in turn enables good train performance.

- 7.2 Network Rail's decision to seek the order to stop-up the Crossing was instead founded by a rigorous process of ongoing, individual and comparative safety-led assessment, consistently with all relevant policy guidance and best practice, and in transparent and continued cooperation with all relevant bodies. This has also been objectively demonstrated and is well in evidence. The most recent NRA is but one robust, expert, evidence tool that bears out this assessment.
- 7.3 Cost is, naturally, an important factor in decision-making in connection with public expenditure. As Mr. Greenwood explains, as an 'arms-length' public body, Network Rail must discharge its fundamental responsibility to the public purse and is strictly subject to HM Treasury's guidance on spending public money<sup>6</sup>. This means that its expenditure must be, in all circumstances, justifiable, and deliver properly and objectively assessed, proportionate, benefits. This responsibility is closely scrutinised internally and externally. Network Rail's decision to fund and construct a footbridge to replace the Crossing, has been subject to these principles and scrutiny.
- 7.4 Moreover, whilst Network Rail understands that individual, lay person, views will inevitably vary regarding how public money should best be spent with regard to mitigations and optioneering, ultimately, the assessment must properly be undertaken objectively and holistically by the appropriate assessor – Network Rail.
- 7.5 It is also a live contextual factor to note that the instant case is not one in which Network Rail proposes extinguishment of the Crossing, *without* providing an alternative and nearby means of crossing which will be accessible for very many. Rather, the proposed footbridge will fulfil this purpose.
- 7.6 Network Rail's overall funding is authorised for 5-year periods (Control Period – CP). For the current Control Period 6 (2019-2024 – CP6), Network Rail has been authorised £34

billion of funding from its regulator, the Office of Road and Rail (ORR). This was granted pursuant to the production of a robust business plan that focused on improving safety, reliability and efficiency of the railway, and proposed high-level outputs to meet specific objectives. This sum, which Network Rail has been granted, is effectively offset by the fact that the funding allocation has notably become even stricter than in the past; Network Rail must today achieve comparable goals as during the previous Control Periods, but for less money.

- 7.7 In terms of the Crossing therefore, and in light of the point raised in some of the objections, concerned broadly with spending public money on what is regarded as an *unnecessary* footbridge, if there was an alternative solution capable of being pursued (i.e. one that is not only reasonable, proportionate and deliverable by Network Rail but fundamentally, one which sufficiently reduces the risk), Network Rail would naturally have pursued it instead of the footbridge. Having followed the rigorous option evaluation process: such option demonstrably does not exist.
- 7.8 Furthermore, when seen against the entirety of Network Rail Level Crossing Risk Reduction Programme, provision of an expensive and risky engineering solution is considered a *last resort* option (just like and extinguishment, yet for different reasons), once all alternatives were considered and discounted.
- 7.9 This can amply be seen within Network Rail's Southern Region. For example, the current funded programme of level crossing risk-reduction schemes on Network Rail's Kent Route comprises 18 level crossings of which 2 are proposed to be stopped-up with the provision of an engineering solution – a footbridge<sup>13</sup>. Ten level crossings were selected for MSL's<sup>14</sup>. The remainder is intended for simple, on-the-ground diversions, which are both cost-effective and more locally palatable<sup>15</sup>. Extinguishment, similarly to provision of a bridge, is considered the last-resort<sup>16</sup>.

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<sup>13</sup> Pilgrims Way LC, Shornemead LC

<sup>14</sup> Chandlers, Bilting, Monkton Parsonage, Tonford, Deanery, Dibleys, East End, Middle Salts, Folly Farm

<sup>15</sup> E.g. Simpsons or Teynham West LC's

<sup>16</sup> E.g. Glebe Way LC where NR proposed a footbridge, this proposal was subsequently changed by Kent CC into an extinguishment.

7.10 Another illustration is the Wessex Route. The programme contains 25 level crossings<sup>17</sup>. Thirteen of which are proposed to be diverted on the ground to the nearest, safe, crossing point (this sometimes involves a *novel* solution e.g. construction of a path or some bespoke minor structures<sup>18</sup> - which Network Rail develops where appropriate). Only one crossing is proposed to be extinguished<sup>19</sup> as there is an accessible footbridge proposed to be built at a nearby, Alice Holt crossing (some 100 yards). All crossings above, selected for closure or mitigation measures, fall within the top 10% highest risk crossings of their type on the Kent and Wessex Route's.

## 8. **Objectors Representations**

- 8.1 The draft order received a number of representations, all of which were received by Network Rail redacted. For this reason, instead of dealing with individual objections, I will explore the main common themes. The key themes may properly be divided into two broad categories: those relating to the level crossing, and those relating to the proposed footbridge.
- 8.2 Crossing-related representations generally assert that the Crossing is safe, this statement in different denominations, invariably relying on the Crossing apparently holding an incident-free record for 158 years, can be found in a large number of objections. Otford Village Society assert, subjectively and rather simply, that the Crossing is “not high risk” because of that 158 years history. Network Rail thoroughly rejects this. This simplification completely sidesteps the valid and properly evidenced safety issues at the Crossing, supplemented further by a long and very concerning list of instances of misuse or near-misses, set out in Ms. Kent's proof. There is no 10 years, let alone 158 years, of incident-clear record.
- 8.3 Indeed, the incident record for the Crossing is a very significant one.
- 8.4 Where the types of incidents raised are challenged by the objectors (e.g. loitering or throwing items [from the Crossing] at the trains), Network Rail's proactive and pre-emptive approach to risk flows directly from its strict regulatory and statutory duties. The inevitable consequence is its very low tolerance for risk, hence for example the uniquely complex, amongst statutory undertakers, methodology and regime for risk assessing level crossings.

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<sup>17</sup> 5 footbridges: Alice Holt LC, Farnborough North LC, Hatches LC, Gramshaw Road LC, Shere Heath LC; 6 MSL's: Banks, Darby Green, East Shalford, Sherrington, Lady Howard, Smiths

<sup>18</sup> E.g. Marsh Lane LC in Lymington

<sup>19</sup> Buckthorn Oak LC.

This is illustrative of the thoughtful and thorough approach to public safety rather than, as some objectors suggest an ulterior motive to too cautiously approach, or even artificially inflate, risk which are otherwise not present.

- 8.5 The Society and several other objectors also argue that the Crossing is convenient means of access to local amenities and facilities. This is offered as a blanket statement, without *any* comparative analysis of available alternatives or the proposed diversion route. Network Rail's Statement of Case provides a useful discussion on both the local amenities and destination points as well as the alternatives available, it is further elaborated at 6 above. The proposed footbridge *will* provide safer, more commodious and sustainable means of crossing over the railway, one that is not dependent on *any* traffic, whether rail or road.
- 8.6 For the small proportion of users who are physically able to use the Crossing, but who would be physically unable to use the footbridge, there is an accessible, metalled and convenient route along footpath 48 located on the eastern side of the railway. No or immaterial inconvenience would arise by this alternative routing. Local amenities, for example, will remain equally accessible, and no comparative hazard would be encountered.
- 8.7 This analysis of course holds true where 'purpose' journeys are concerned. It is yet more difficult to see how a 'leisure' user could reasonably be said to be at all inconvenienced.
- 8.8 Footbridge-related representations raise numerous issues ranging from its aesthetics and incongruity to maintenance issues and alleged lack of safety. The latter assertion frequents in objectors' representations.
- 8.9 Otford Parish Council suggests that the footbridge will be less safe than the Crossing and references Network Rail's record (apparently appended to its previous application for stopping up) of accidents at footbridges. Since no reference is made which would allow me to identify the document in question, I can only assume that the reference is made to the spreadsheet "*Incident Log at Footbridges*" compiled by Network Rail in preparation to its section 120 application which contains details of eleven (11) incidents and accidents at footbridges, recorded nationwide between 2011 and 2016. Whilst descriptions of a few of these accidents are admittedly graphic, no parallel can (or should) properly be drawn with the risk to which members of public are exposed to on level crossings. Furthermore, the record, contrary to the clear and unjustified extrapolation attempted by the Council, does

not evidence some (any) *inherent* danger in using footbridges. Consequently, juxtaposition of “unsafe” footbridges with a “safe” Crossing is without any reflection in observable reality.

- 8.10 This thread is developed further, in similar vein, in a representation against the Order dated 25 November 2019. The argument is introduced by the intriguing statement “*Few people realise how dangerous steps can be*”. This hypothesis is elaborated by extensive reference to a Health and Safety Executive commissioned study “*Falls on Stairways*”<sup>20</sup>.
- 8.11 It should be first point out that the quoted “*study*” is in fact a simple literature review rather than any research piece. The author rightly makes this clear in the title. The author also concedes lack of or poor quality of evidence which is often “*based on ancient records*” where “*detail is often lacking*”<sup>21</sup>. It also highlights the “need for a thorough method of investigating” in light of “relatively little research” done in the field.
- 8.12 The paper does discuss some common, identified causes of accidents at stairs. Thus, “falls may be influenced by stair design, maintenance” which in the present case is dictated by and falls within the relevant British, Highways Agency and Network Rail standards. Additionally, the paper states positively that “Features such as handrails, colour-contrasting anti-slip nosings and adequate lighting **will** improve the stairway environment” [emphasis added], as above, these matters are considered and designed into the structure as a matter of cause, Network Rail as the competent bridge authority is under strict obligation to ensure compliance of its designs and built-out structures with governing standards, it is no different in this case.
- 8.13 As regards the specifics of stair-related accidents, the paper declares that “Most stair injuries occur in the home” and the underlying root causes are related especially to stair design; tread risers; steepness or pitch of a stair (again, all are regulated by the relevant standards and designed accordingly.)
- 8.14 Several objectors raise the personal safety argument, again, in favour of the Crossing and (strongly) against the footbridge. The proposed diversion route contains no less than seven

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<sup>20</sup> A. Scot, Falls on Stairways – Literature Review Report Number HSL/2005/10  
[https://www.hse.gov.uk/research/hsl\\_pdf/2005/hsl0510.pdf](https://www.hse.gov.uk/research/hsl_pdf/2005/hsl0510.pdf) (Appendix 10)

<sup>21</sup> Ibid at p3.

changes of direction which creates a risk of someone hiding behind a blind corner to attack a passing pedestrian. No basis whatsoever is offered for these claims, especially to illustrate *any* heightened attraction of footbridges for criminal behaviour. With regards to the subjective feeling of personal safety, it is very difficult to see how a relatively open and lit (elevated above ground level) footbridge can offer less personal safety than an unlit level crossing, unlit, obscured by vegetation and other visual impediments on the ground. This is corroborated in a representation in support to the Order, dated 28 November 2019 (at 23:18) “there are already blind bends and hiding places for muggers on the route”. It should also be noted that the local footpath network generally (e.g. FP48 and FP49) runs thorough confined areas behind residential properties, unlit and with numerous blind corners, additionally obscured by dense vegetation. With this in mind the footbridge should be the least attractive location for criminal activity.

- 8.15 The further theme in the objections can broadly be described as environmental and general maintenance.
- 8.16 With regards to the latter, light pollution is raised. Several objections express concern over “excessive” lighting, polluting the otherwise unlit surrounds. Depending on the solution chosen, examples in other locations<sup>22</sup> show that considerate design can effectively deal with these issues. Whilst lighting of a public highway is ultimately a matter for the highways authority, Network Rail does design low level lights (or handrail integrated) which can be characterised by their negligible effect on the surrounding area.
- 8.17 Maintenance of the footbridge: Network Rail will be (unless the structure is adopted by the Council) the owner of it and will be responsible to maintain the superstructure. Any wearing (highway) surface is highway maintainable at public expense and is, by operation of law<sup>23</sup>, responsibility of the local highways’ authority. Keeping the surface clear of mud, snow and ice also features in representations as evidence of Network Rail abdicating from its proper responsibilities. This is simply not so: not only the this falls squarely within the domain of the highways authority by virtue of section 41 Highways Act 1980, subsection (1A) expressly provides that “In particular, a highway authority are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice”

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<sup>22</sup> E.g. recently constructed footbridges in Wool, Chandlers Ford.

<sup>23</sup> Section 116 of the Transport Act 1968

[my emphasis].

- 8.18 Other points raised in the objections include accessibility for those on wheelchairs and pushing prams, also for the blind and partially sighted. The first issue was examined above in 6. The Crossing does not offer *any* accessibility for wheelchairs, the proposed footbridge will not introduce any difficulty which was not present before. As regards parents with prams, a number of representations against the order raise this point however, the only apparently first-hand evidence from a local resident who uses the Crossing and is a parent of small children can be found in a representation in support (dated 29 November 2019 at 23:19). Correctly, the author states that the Crossing “is impassable to buggies” and further that “with stairs, a parent can carry the buggy up the stairs, then return to the bottom to carry up the waiting [safely as against near the Crossing] toddler. However, a young child cannot safely be left waiting on one side of” the Crossing. Further down in the same representation we can find an account of the risks the Network Rail application seeks to eliminate: “watching my sister wrestle two resisting children over the level crossing with a train suddenly rounding the corner is one of the more scary things I have seen...”.
- 8.19 Another aspect of accessibility of the diversion route and the Crossing can be found in the objection dated 24 November 2019. The representation addresses 2 principal points: impact on “people with mobility problems” (discussed above) and those who are “blind or partially sighted”. On the latter group, thankfully, the letter concedes that a footbridge would have benefits to this group of users as “they wouldn’t have to worry at the crossing about seeing the train”. One significant drawback however appears to be in the fact that “steps are risky for people with vision problems at the best of times” and that that they would experience “especial difficulty seeing a safe route if there were obstructions on the bridge”. Wet, icy conditions and bad weather are relied on in support of this claim.
- 8.20 Regretfully, the letter does not explain how the Crossing (and the current FP49 route) would not suffer from the same issues. On site visits (in varying conditions) it was not immediately apparent to me. Furthermore, (referring the Inspector to the comparative analysis of stiles and a footbridge from 6.3 onwards above), given that on a standards-compliant structure there is a succession of steps, all of equal width and rise, divided into two distinct flights (by a landing) with a handrail for support. Even assuming a blind or partially sighted user who is not familiar with the footbridge (and its exact layout and number of steps), the handrail

is designed to inform such a user of both the beginning of a flight of stair and the end (it ends or curls downwards, tactile surface at the bottom of stairs).

- 8.21 The same obviously cannot be said about the Crossing, the steps are of uneven width and rise, the stiles have height variances up to two centimetres (which can make a difference to a blind person). A blind or partially sighted user ultimately does not know where exactly the step on a stile is located. It has to be located organoleptically whilst balancing oneself on one leg and holding onto the post (assuming the blind user manages to locate it without difficulty). In the case of a footbridge, these issues have no relevance – it simply does not matter if a user misses the narrow width equivalent to the width of a step on a stile); each step on a footbridge spans across the width of the stairwell - some 2.2 metres wide.
- 8.22 Assuming that such a user manages somehow to safely negotiate the stile, there is a procession of unevenly separated steps towards the Crossing and, crucially, the Crossing surface which is intersected by four running rails, protruding slightly above the deck and which can create a hazard to a blind/partially sighted person. In case of a trip and fall, the ability to recover oneself might not be impacted yet the critical ability to move to the position of safety quickly in order to avoid an approaching train can be severely affected. With no reference points or audible aids, it may in fact be next to impossible for a blind person identify the proper direction of travel. With this in mind, it is of course safer for users with these characteristics to use the footbridge. The author of the letter however, in a reality-defying manner, concludes that “footbridge probably not improve safety for people who are blind or partially sighted”.
- 8.23 The aesthetics-related objections raise the general lack of in keeping of the proposed structure, its incongruity and the consequential impact (by overlooking) on the privacy of residential properties near it. Insofar as I am aware these matters have properly been considered by the planning authority<sup>24</sup> and Network Rail’s planning application was approved. The Officer’s Report to this application deals specifically with privacy issues, as adequately addressed by the applicant. The Report concludes that “Views to the east from the first few houses within Hopfield Close (15 - 18) are fairly well screened by evergreen planting that exists within Hopfield Close and will not be disturbed by this proposal. There

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<sup>24</sup> Matter ref. 15/01863/PART18 at <https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NQ5AT9BK0LO00>

are a few glimpses of the proposed western elevation of the walkway but these can be dealt with by privacy screening rather than a railing finish on the structure.”<sup>25</sup>

- 8.24 Finally, a single objection (an email dated 07 December 2019 at 07:43) proposes its own solution. In brief, that Network Rail should build a ramped footbridge at the station from the crest of the cutting to the station. First, a ramped structure was considered in the previous application and rejected for objective constraints, chief of which were size and incongruity with the corresponding requirement for land acquisition, lack of in-keeping and disproportionate (to the benefits sought) cost.
- 8.25 On the financial aspect, Mr. Greenwood explains Network Rail’s scrutinous position as a spender of public money.
- 8.26 A similar option to that proposed in the objection was however considered. Specifically, Network Rail had sought to utilise favourable lay of the land near the A225 overbridge (i.e. a cutting with FP48 on it and a raised approach to A225 bridge on the other side). This would allow for a provision of a ramp spanning over the railway. This option was however appropriately discounted due to disruptive (and risk-burdened), to both FP48 and A225 nature of the proposed works. Also, to effect such a proposal, the current station footbridge would need to be reconstructed as, following assessment, it was deemed to have insufficient capacity to support additional load. The footbridge is a station facility, its sole purpose is to give access to platforms for travelling passengers rather than give unrestricted access to members of public. To do so would create a significant liability issue to the station tenant. Finally, an accessible footway across A225 bridge already is available, just metres away. It is also very doubtful that such a structure would add value.

## 9. Expediency

- 9.1 The statutory purpose of s.119A is fundamental, but straightforward. The special purpose of railway-specific sections of the 1980 Act is public safety, viewed within the wider context of expediency in overall terms: subsection (1). Wider expediency considerations are found under subsection (4). Reasonable practicability is a consideration of what is and is not expedient in the wider sense: subsection (4)(a).

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<sup>25</sup> At p.2 [https://pa.sevenoaks.gov.uk/online-applications/files/B2BEF732C779A019B2C090D87AB9EDF0/pdf/15\\_01863\\_PART18-OFFICER\\_REPORT-1266483.pdf](https://pa.sevenoaks.gov.uk/online-applications/files/B2BEF732C779A019B2C090D87AB9EDF0/pdf/15_01863_PART18-OFFICER_REPORT-1266483.pdf) (Appendix 11)

9.2 The inspector will be aware that Parliament has prescribed a series of relevant questions: see First Schedule to the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (SI 1993 No.9), as follows (emphasis added):

- the *use currently made of the existing path, including numbers and types of users, and whether there are any significant seasonal variations, giving the source for this information (any circumstances preventing or inhibiting such use must also be mentioned);*
- 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 effect of the loss of the crossing on users, in particular whether there are alternative rights of way, *the safety of these relative to the existing rail crossing, and the effect on any connecting rights of way and on the network as a whole;*
- *the opportunity for taking alternative action to remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing;*
- *the estimated cost of any practicable measures identified under (iv) above; and*
- the barriers and/or signs that would need to be erected at the crossing or the point from which any path or way is to be extinguished, assuming the order is confirmed.

9.3 Section 119A is clear that whilst the decision-taker is required to conclude, prior to confirmation of the order, that “*it is expedient to confirm the order having regard to all circumstances*” it does not, in and of itself, distract from the primary purpose of s.119A which is “safety”. Inevitably, there is a balancing exercise to be undertaken, but one which maintains the statutory priority under subsection (1) in terms of public safety.

9.4 These considerations apply equally to the orders made under s120(3), whilst the only explicit reference it makes is to s119A(1), a decision-maker under s120(3) [Secretary of State] makes the order having regard to all circumstances as is the case where confirmation of s119A order is concerned.

- 9.5 Section 120(5)(d) provides for, with regards to rail crossing orders, the power of Secretary of State to require [Network Rail] to enter into an agreement with Kent County Council “to defray, or to make such contribution as may be specified”. This may include “any compensation” under section 28. In the present case no “loss” within the meaning of section 28 was raised. It is difficult to see how it could arise. Network Rail’s position in this regard is that there no basis for such compensation payments.
- 9.6 Both the Crossing and the proposed footbridge are situated entirely within Network Rail’s operational estate. The land does not carry any, other than Network Rail’s, statutory undertaker’s apparatus.
- 9.7 For the purposes of the making of the order, Network Rail’s consent is given.
- 9.8 All statutory undertakers who have apparatus in the vicinity of the Crossing have been duly consulted. No objections have been made.
- 9.9 Section 121(3) by reference to s.29 of the 1980 Act, provides that the decision maker must “*have regard to agriculture, forestry and nature conservation*”. The Inspector is invited to observe that, albeit due regard has been had, this provision has no appreciable application in the present matter given the locality and affected land, but even if it did, it would nonetheless bear no significance in the overall expediency balance.

#### 10. **Optioneering by Network Rail**

- 10.1 Before addressing specific options, I provide below, a short overview of Network Rail’s overarching governance, design and product approval processes through which the development and selection of safe and viable options is undertaken.
- 10.2 As Mr. Greenwood explains, Network Rail’s Operating Licence regulates how it must act as a responsible custodian of railway infrastructure. In effect, it needs to routinely update and assure its regulator, the ORR, and the DfT that its investment schemes are properly planned, governed and delivered in the most efficient and cost-effective manner achievable.
- 10.3 To ensure effective performance of its functions, Network Rail’s own Investment Regulations impose compliance with robust infrastructure investment governance. The underlying aim is to ensure accurate forecasting, sustainable methods of development and delivery of schemes which minimise waste, manage risks and maximise financial efficiency,

thereby meeting UK Government's requirements.

10.4 The practical manifestation of this approach is the process called Governance of Railway Infrastructure Projects (GRIP). GRIP comprises of 8 distinct stages:

- a. GRIP Stage 1 – Output Definition. This has an aim to define the output for the project. The output will be to define the needs and requirements – the problem or opportunity, through stakeholder consultation.
- b. GRIP Stage 2 – Feasibility. This has an aim to define the scope of investment and identify constraints. It needs to confirm that the outputs can be economically delivered and are aligned with organisational strategy. The output will be to identify solutions in response to the defined requirements.
- c. GRIP Stage 3 – Option Selection. This has the aim to develop options for addressing constraints. Assesses and selects the most appropriate option that delivers the stakeholders requirements, together with confirmation that the outputs can be economically delivered. The output will be to have a single option determined and gain stakeholder approval to the option approved through an Approval in Principle (AIP).
- d. GRIP Stage 4 – Single Option Development. This has the aim to initiate the development of the chosen single option with the output being to reference and/or outline the design requirements.
- e. GRIP Stage 5 – Detailed Design. This has the aim to produce a complete, robust engineering design that underpins definitive cost/time/resource and risk estimates. The output will be a full design to which the project will be built.
- f. GRIP Stage 6 – Construction, Test and Commission. This has the aim to deliver the specification and testing to confirm operation in accordance with design. The output is to have the system built, tested and commissioned into use
- g. GRIP Stage 7 – Scheme Handback. This has the aim to transfer asset responsibility from the project team to the operator and maintainer. The

output is to have the project handed over to the maintainer or operator.

- h. GRIP Stage 8 – Project Closeout. This has the aim to close out project documentation in an orderly manner. Contractual accounts will be settled, and any contingencies and warranties are put into place. Assessment of benefits carried out. The output is for the project to be formally closed out and project support systems formally closed.

- 10.5 The process for development of level crossing risk reduction options (GRIP stages 1 to 3) is ordinarily initiated by risk assessments produced by Network Rail’s Level Crossing Managers. A risk assessment typically considers a number of options for making a crossing safe/safer and contains a recommendation, based on a Cost/Benefit Analysis, of a solution. This may be anything from simple diversion or extinguishment to an engineering intervention e.g. a bridge or a risk mitigation measure like MSLs.
- 10.6 The Cost Benefit Analysis is an instrument that Level Crossings Managers rely upon in putting a recommendation forward. It takes the risk score of a crossing, predicted cost and risk reduction achieved into account.
- 10.7 Where the option recommended is an engineering solution, GRIP is applied further to manage the design, development and delivery of that option. Given that the Crossing, due to objectively sound reasons, could not be recommended for an engineering or risk-mitigation solution, the following options were explored within GRIP stages 1 to 3:
- 10.8 Footbridge: A standard design footbridge costs in excess of £1m. Footbridges in broadly, similar locations (e.g. Wool Footpath or Chandlers Ford) constructed in CP5 (2014-2019) cost approximately £1.25m.
- 10.9 Footbridge with ramps: Based on comparable locations across the region (Gomshall Station - £2.4m in 2014 and Farnborough North – £2.7 for standard design and £4.2m for bespoke design) it can reasonably be assumed that such a footbridge should cost (at least) in excess of £2.5m. This state of affairs is further exacerbated by the fact that construction of such a structure would require significant land acquisition, create distinct planning and environmental issues; mainly due to its incongruity and lack of in-keeping with its surroundings. Bearing in mind the wider regulatory context, especially Network Rail’s obligation towards the public purse and duty to deliver value for money (in the present

case, to provide a proportionate solution that delivers sufficient risk reduction), such expenditure could not be justified.

- 10.10 Subway: The estimated cost of a structure is between £4m and £6M. Subways ordinarily have very significant dimensions. In order to achieve the prescribed gradient of descent and to ensure that the subway passes safely underneath the operational railway, invariably additional land would need to be acquired. In this instance, this has proven an insurmountable land constraint. Moreover, the construction of a subway would also prove immensely disruptive to line-side neighbours and railway operations. Any construction operations directly underneath the railway line would require a blockade with the ensuing, very significant, negative consequences on railway operations. It would separately trigger compensation payments to the train operator by Network Rail (compensation is typically charged per minute of delay and the rate, on mainline railway, can be up to £90 per minute in one direction). The provision of a subway also presents ongoing, significant maintenance issues. Not only underground structures are typically affected by flooding; they also are known attractors for antisocial behaviour, etc.
- 10.11 MSLs: Ms. Kent expressly talks to the provision of MSLs, further to other hypothetical operational mitigations. I emphasise also that these do not in any event adequately control risk, still less at a site as evidently hazardous as the Crossing, as there is the unavoidable reliance on users to adhere to the red light.

**Other: Section 119A(4)(b)**

- 10.12 Section 119A(4), at subsection (b) expands upon the process for confirmation and is concerned, widely, with arrangements made for ensuring that, upon confirmation, the site of the crossing is secured and pedestrians notified and diverted to alternative public paths. More specifically, s.119A(4)(b) refers to “any appropriate barriers and signs (...) erected and maintained”.
- 10.13 Upon the Order being confirmed, Network Rail confirms that it will expeditiously install permanent fencing to securely close off both the northern and southern Crossing entrances (sited within the boundary of railway land) and remove all existing Crossing furniture.
- 10.14 Network Rail will also, subject to any contrary direction given by the OMA, install

permanent (no trespass) signs, placing them visibly for the public, inside the boundary of the railway land and within very close proximity of both fenced-off Crossing entrances. Should any further detail be required by the Inspector in respect of this issue, it can of course be explored at the Public Inquiry, if required.

## 11. Expediency Balancing & Conclusion

- 11.1 S.119A, for the purposes of formulating a conclusion on confirmation of a stopping up order, requires an end balance to be performed. This must weigh, inevitably, the clear and fundamentally stated focus of s.119A – public safety, together with other betterment that may arise (e.g. as in this case, the promotion of operational efficiency) against any disadvantages – where these are found to be in evidence – e.g. relative inconvenience and commodiousness of alternative routing).
- 11.2 My proof of evidence speaks to Network Rail’s end balance, that the fundamental expediency considerations in respect of both section 119A(1) and, thereafter, section 119A(4) would squarely be satisfied by the diversion. Equally, these expediency considerations would not be satisfied were the diversion not to be ordered.
- 11.3 In reinforcing the safety case, the NRA and the evidence provided by Ms. Kent expertly confirm that the continued use of the Crossing by the public combined with surrounding factors e.g. sighting distances, frequency of train movements render it obviously and unacceptably unsafe. Network Rail’s evidence confirms that no further mitigation will prove sufficient to render the Crossing safe. The assessment of mitigations and options has been entirely robust. All have been rejected, save for closure. Only closure is sustainable, and in statutory terms, ‘reasonably practicable’.
- 11.4 As regards the reasonable practicability of the options considered and rejected (notably, by bodies not limited to Network Rail), the construction of a bridge or a tunnel (even if physically deliverable – which is not the case) could not and would not be funded, at this location. It is of note also that a ramped bridge or tunnel would ultimately serve the benefit only of small proportion of users (vis-à-vis the majority of recorded use and the local community; i.e. this number of users nonetheless gives rise to the safety risk robustly

assessed).

- 11.5 Network Rail has very serious, justified and robustly evidenced concerns in relation to the safety of the Crossing. It is separately statutorily bound to promote public safety as well as operational efficiency. In pursuance of these fundamental duties, and in the public interest, it seeks to safeguard the public from evidenced safety risk, as well as the railway network against any unnecessary and preventable disruption caused by unsafe use of level crossings, including in the form of consequential delays being caused to the wider railway network and railway operations.
- 11.6 The ongoing slowing of 153 trains passing the Crossing carries an intolerable impact on timetable/performance, and attendant financial liability. Network Rail may well also be prosecuted for misuse and trespass in relation to the Crossing. It may also attract liability to the train operating company, under the Track Access Contract, whereby Network Rail is liable to compensate the train operator at a contractual rate calculated per one minute of delay. Interruptions related to level crossing misuse, with resulting delays, can and often do translate into very substantial compensation payments.
- 11.7 Network Rail considers that in this instance, the safety case, alone, clearly answers the end balance regarding overall expediency, even before operational efficiency is even turned to. Yet, it is respectfully submitted that when operational expediency is factored into account, the end balance reached invited by Network Rail is the more irresistible.
- 11.8 Conversely, when scrutinised, Network Rail considers that the expediency-related matters argued to militate against closure, are few, comparatively insignificant, and do not approach outweighing the case that demonstrates the expediency of closure. It is not evidentially maintained that removal of the Crossing would bring about any, still less significant, net detrimental impact on users in convenience terms.
- 11.9 Indeed, a comparatively superior diversion route will be delivered, convenient alternative routes exist, both in terms of their relative safety and general commodiousness, etc. These are located near to the Crossing and continue to provide suitable and sufficient access to the village facilities and amenities.

- 11.10 In consideration of the wider expediency (i.e. when 'having regard to all circumstances') it has been evidenced that there is a choice of alternative, commodious routes in proximity to the Crossing that provide users with perfectly adequate access to local facilities. As set out above, there is no reason to suggest that connectivity to local amenities and facilities would suffer any material detriment in absence of the Crossing.
- 11.11 The main strictly pedestrian routes considered here, all with means of crossing over the railway (namely, the proposed footbridge, FP48 and Tudor Drive, Station Approach) are superior. Not only they are fundamentally safer; either by minimising or eliminating the risk of being struck by a train altogether, they are also just as (or indeed more) commodious, irrespective of additional length.
- 11.12 Even when factoring in the relative inconvenience argued to be caused by longer distances of travel, the differential in distances is inconsequential, given the ultimate leisure character of user. The insignificant additional journey in these instances is amply counterbalanced by these factors.
- 11.13 Network Rail of course acknowledges that individual objectors bear personal reasons (which ultimately, will largely derive a subjective perception of convenience) for wishing the Crossing to remain open. Network Rail however must continue to objectively and expertly assess risk with regard to all potential users, that properly accounts for a representative cross-section of society.
- 11.14 For the reasons given above, it is my respectful invitation, having considered all relevant matters together with the evidence of my colleagues Ms. Kent and Mr. Greenwood, for the Order to be made.

**STATEMENT OF TRUTH**

To the best of my knowledge, the matters stated in this Proof of Evidence are true.

Signed:



**Damian Hajnus, Network Rail**

Dated: 06 Apr. 21

**Appendices:**

1. Appendix 1 – The Order;
2. Appendix 2 – Amenities Map;
3. Appendix 3 – Crashmaps reports;
4. Appendix 4 – Example Footbridge Design Drawings;
5. Appendix 5 – Noise Abatement Notice dated 24 May 2002;
6. Appendix 6 – Examples of Stile Design Guidance by Highways’ Authorities;
7. Appendix 7 – BS 5395 – 1 – 2010 (extract);
8. Appendix 8 - Design of Bridges Network Rail Standard NR\_L3\_CIV\_020 (extract);
9. Appendix 9 – BS 8300 -2:2018 (extract);
10. Appendix 10 – HSE Document “Falls on Stairs”;
11. Appendix 11 – Sevenoaks Borough Council Officer’s Report dated 16/09/2015.