

APPENDIX 8

Consultation responses – path users and interested individuals

8.1 Email of 19 November 2014:

"Thank you for sending details of the Network Rail application to HCC to extinguish the section of Buriton footpath FP3 that crosses the London - Portsmouth main rail line. I do not live within the 1km catchment area for the more extended consultation which is apparently under way at present; but all the same, [1] I live in Buriton, [2] I use the crossing occasionally, and therefore [3] I] am affected by some of the issues involved. I should therefore like to submit these few comments on the application, and I hope they can be taken into consideration when HCC discusses the matter and before any irrevocable decision is taken.

I think that closure of the crossing would cause some local inconvenience, and would be seen as a sad loss by the many individuals and groups who currently use it. However, on balance, I think that the arguments in favour of closure - which essentially boil down to the need to eliminate any possibility of fatal accidents - in the end outweigh such inconvenience and the consequent loss of a precious local amenity.

I accept that none of the possible alternatives - e.g. bridge, subway, control lights, etc. - is really viable, either on grounds of cost, or effectiveness, or in some cases both. The fact that there is an alternative route a comparatively short distance away - viz. the underpass beneath the bridge on South Lane, Buriton - seems to me in itself to be a more than adequate substitute, and in the end one that is only marginally less convenient.

But I do think there is a very important corollary to all the above, and one closely linked to it. This is the ongoing matter of train horn noise. The proposed extinguishment of the foot crossing should in my view be made firmly conditional on the suppression of these distressingly loud and discordant sounds, which thanks to the surrounding hills resonate loudly round this normally peaceful village at least six times an hour (more in busy periods and early in the morning and late at night). I think it needs to be clearly established, in advance of any decision about the crossing, whether this outcome can be guaranteed by Network Rail — and if not, why not. There needs to be some gain for the community, as well as loss."

8.2 Email of 7 November 2014:

"I am writing to oppose closure of the foot crossing of the railway at Buriton recreation ground. I gather you are the correct point of contact.

Lets consider the benefits of a good footbridge:

- 1: A suitable, 'historic context' bridge will add to the area*
- 2: A footbridge will attract train spotters back to Buriton, replacing the old access used beside the track before NR blocked it off*
- 3: A footbridge attracts others to 'the trains', bridges are popular with young children especially, to wave at trains*
- 4: Train spotters can be discouraged from using the hump back bridge on Greenaway Lane, which is where they congregate to watch specials at the moment. A dangerous spot indeed.*
- 5. Lets not get sucked into an argument about all access.*

Closing a crossing is no access to anyone approach, hardly beneficial.

Background:

I questions NR's motivation.

Network Rail is a commercial organisation, which puts profits ahead of service.

For evidence of this, there were plans to make Petersfield a three platform station with passing loop. Such a change would have improved the London/Portsmouth service, but

instead they were scrapped and the car park made larger. Given the prices in the car park, it would seem that the train service is a secondary consideration to the profit motive.

The paths from Buriton into the Hangers are ancient rights of way. The railway company chose to put in the railway line. It could have put in proper crossings but has chosen not to. Any study that involves NR cannot be seen as independent. Clearly a footbridge could be installed (perhaps a historic one from a preserved railway), or automatic gates could be installed. It might be expensive, but that isn't the point. The point is that a commercial entity wishes to deprive the people of the country their ancient rights.

The role of the SDNP Authority comes into question too. Given that the role of the SDNPA is to improve access into areas such as the QECP (this was stated during the public enquiry into setting up the SDNP), it is hard to see which part of their remit they are following in allowing the closure of an ancient access path.

Yes, the crossing should be properly engineered, something the railway company needs to do, but not by closing it. That is not a solution; it is in some curious way stating that a railway somehow trumps any other consideration. It doesn't.

The first step is a proper, independent enquiry into the options, considering all the wider benefits in a proper holistic assessment. Money should not be a primary consideration, for the right scheme I'm sure various grants can be applied for."

10 November 2014

Re: Extinguishment of Buriton Footpath Level Crossing

Thank you for sending the Consultation Letter by email. Please find enclosed my response.

I am very concerned about this letter. Network Rail have applied to close this crossing on safety grounds, but the Consultation Letter does not describe some important safety concerns that Network Rail includes in their application. Nor is their application appended.

I request that the public are properly informed about Network Rail's safety concerns. Only then will the public's responses to the Consultancy Letter be addressing the real situation.

Yours sincerely,

Preamble

Footpath 3 was created to provide a route to the lime works for pedestrians that was not used by horses and carts, which used what is now the Hangers Way. Part of this route is now already closed. It remains shown on the chart appended, but it doesn't exist in reality. The route forks right after the railway crossing and heads towards the quarry under a footbridge marked FB.



View from the "Waiting area" of the footpath level crossing, Buriton side.

After the lime works closed, the reason for Footpath 3 terminated.

Footpath 3 had been created when the railway was steam driven, the trains were relatively slow, there were not so many of them and safety standards were completely different.

Network Rail has now submitted a justification for closing the railway crossing on safety grounds. There are several unsafe aspects in the design and location of this crossing, and there are now many faster and quieter trains. In response to the unacceptable numbers of accidental fatalities at level crossings, Network Rail has a programme to remove them and provide alternative arrangements. However, this crossing is part of a public Right of Way, the responsibility of Hampshire County Council.

Hampshire County Council state on their website that "a Right of Way can only be extinguished if ... it is not needed for use by the public and in all the circumstances it is expedient to close it". The crossing is not needed because the Hangers Way provides a perfectly safe and convenient alternative route. In their application to close the crossing, Network Rail have shown in detail why it is certainly expedient to close it. The application fully meets the requirements for extinguishment from HCC.

Unfortunately, the public Consultation Letter from HCC does not describe fully Network Rail's safety reasons given to justify closing the crossing and the NR application is not appended. Furthermore, Network Rail's application can only be obtained from HCC with a Freedom of Information Request, making it difficult for the public to find out all the reasons the crossing is considered unsafe. This will certainly skew the public's response to the Consultation Letter.

The main problem is the safety of people using this railway crossing due to the exceptional safety hazards inherent for this crossing. Closing the crossing is secondary, it is the solution to the problem.

The fact that this is a particularly dangerous crossing does not come over in the Consultation Letter. All that is said is that Network Rail call it high risk and there is a summary list of five points.

I believe that the special dangers of this crossing should be better described and or the Network Rail application to close the crossing, which describes all the safety hazards, should have been appended.

Network Rail has a legal responsibility for peoples' safety on this crossing under the Health and Safety at Work Act. Accordingly they have made a technical risk assessment, using their ALCRM model, which gives the crossing a risk factor of C4 – one of the highest.

Hampshire County Council should be treating this primarily as a safety problem. Are the dangers of this crossing acceptable on a public Right of Way for which HCC is responsible?

When the train is travelling at the line speed of 85mph, from the moment a train is seen, it arrives at the crossing in less time than an able bodied adult takes to walk across the crossing.

Walking across the tracks, between the decision to go points, takes 10 seconds. From the north, trains are first seen at a distance of 200m. From the south, the tunnel entrance is 350m from the crossing.

This train should have sounded its horn 4 seconds ago and will arrive in 5 seconds



This train will arrive in 9 seconds

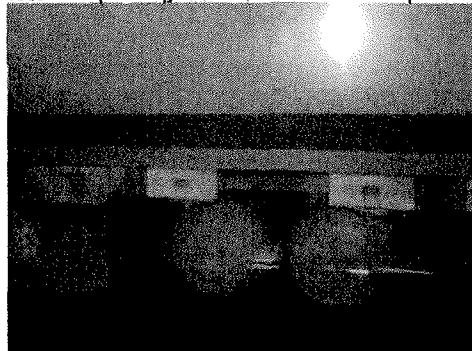


If crossing the tracks involves children, dogs or grandparents, it may take a lot more than 10 seconds. These extremely short arrival times compared with the crossing time are completely unacceptable. Even if the trains were travelling at half the line speed, the arrival times would still be counted in seconds and would be unacceptable.

There are major disadvantages of using Footpath 3 that are not described in the Consultation Letter, apart from having to use a dangerous railway crossing.

The crossing is not accessible to anyone who is not able bodied. There is a steep flight of 17, 9 inch tall steps to the top of the railway embankment. Then the top step leads directly onto the tracks. The distance from the edge of the top step to where the train carriages pass is approximately 4 feet. Although the Stop, Look, Listen sign is next to the crossing, there is no safe waiting space. Standing on the top step, carriages passing at 85mph are only 3 feet away. This is one of the most dangerous aspects of this crossing and is unacceptable.

Photo of a passing train taken from 1 step down



The footpath doesn't actually exist on the ground, it is necessary to walk over wet, partly muddy, slippery and sloping cut grass of the playing field. This is strong evidence that not so many people can be using this crossing.

This is the view from near the gate to the crossing showing the proximity of the skateboard park and the absence of a footpath.

The Samaritans also believe this railway crossing is high risk.



The risks associated with youths using the playing fields are not described at all in the Consultation Letter.

A gate to the crossing is located in the southern corner of the playing fields. Many youths use the playing fields, there are football and cricket pitches, a children's play area and a skateboard park just 30m from the gate. Many youths using these facilities are unsupervised. The Consultation Letter contains a list of instances of misuse of the crossing reported by train drivers. All but one involves youths. The Network Rail justification for closing the crossing includes a list of unreported instances of misuse. These also are mostly by youths. They originate from a local survey completed several years ago and passed to Buriton Parish Council.

Clearly unsupervised youths are accessing the crossing from the playing field in order to do what youths and teenagers do. It is astonishing that this association of youths in the playing

field and youths misusing the crossing was not mentioned in the Consultation Letter when it is such an important and unique aspect of the safety hazards of this crossing.

Furthermore, the numbers of youths accessing the crossing is likely to increase in the future. Buriton Parish Council is promoting interest in the lime works and has plans to increase the facilities for youths in the playing field, which is also missing from the Consultation Letter.

A safe alternative crossing already exists, Hangers Way/Shipwrights Way

There are four routes to access the Downs from Buriton High Street, Kiln Lane, Footpath 3, Hangers Way, which is called Bridleway 4 on the chart appended and another footpath Right of Way starting at the eastern end running due south through the woods to the top of the Downs. Kiln Lane is a road without footpaths. Hangers Way meets footpath 3 a few metres on the other side of the railway tracks and leads into the woods and up to the top of the Downs. Closing footpath 3 leaves three routes to access the Downs from the High Street.

There are advantages for using Hangers Way that are not described in the Consultation Letter. The surface is prepared for walking on, there are no steps, just a steady gradient to the underpass that provides access to the woods. It is beautiful, passing Buriton pond and its wildlife. People may well start at this end of the High Street, where the Post Office, St Marys Church and a car park are located. This is the easiest and safest access to the Downs for visitors to the area. The distance to the underpass is 300m whereas footpath 3 is 270m from the High Street to the railway embankment (reference Consultation Letter), a difference of only 30m.

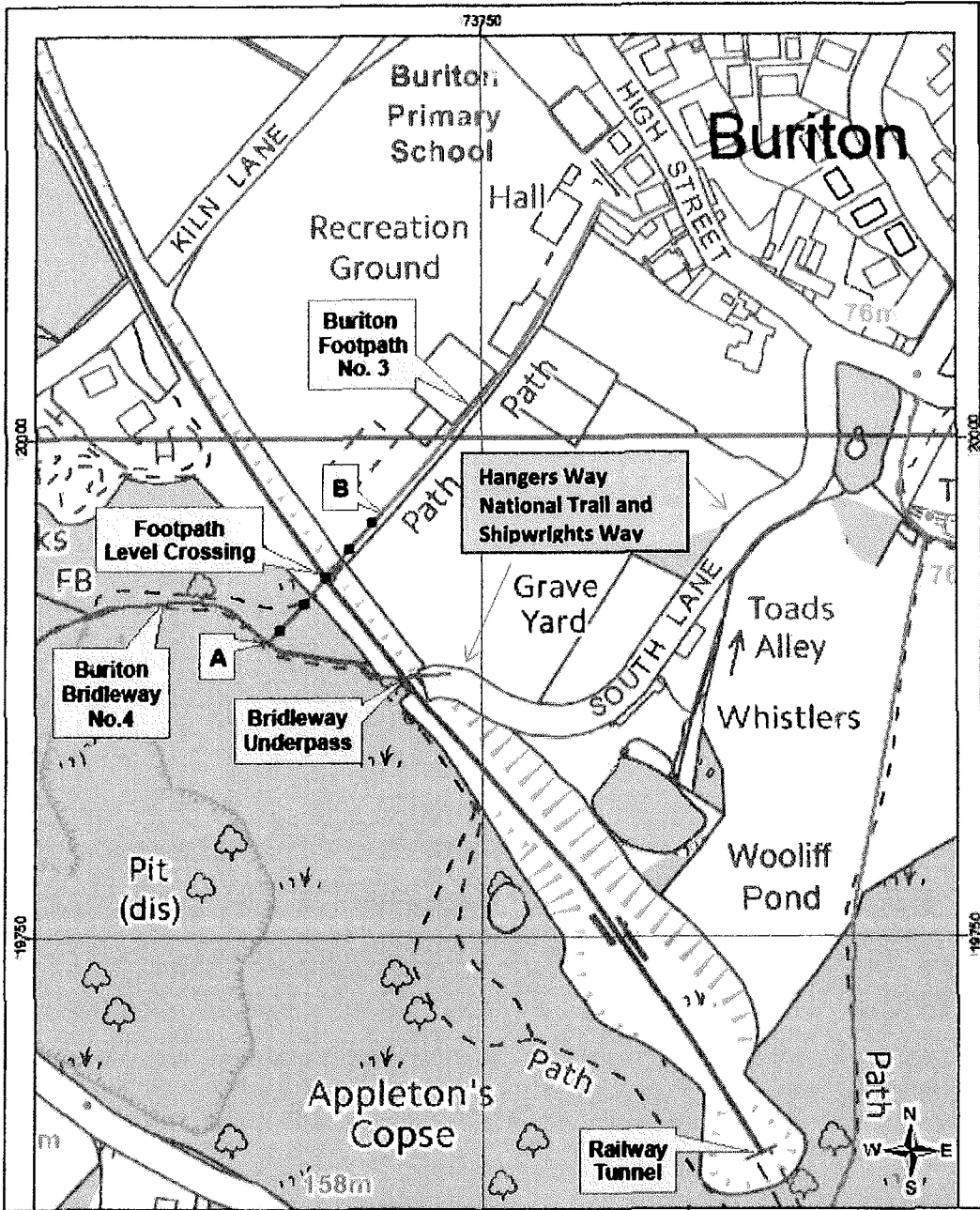
Conclusions

The precedence for closing this crossing has already been set by closure of the footpath level crossing at Idsworth, not far from the other end of the railway tunnel. The similarities are remarkable. This crossing was a Right of Way connecting the South Downs Way to Idsworth church. Youths also had access to the crossing from adjacent land used for field trips. They misused the crossing playing chicken in front of trains. There was an underpass just 50m away through which the footpath was diverted.

This response describes some of the dangers to the public from using the footpath level crossing that are missing from the Consultation Letter. The public Consultation Letter has been distributed and responses requested, but the public have not been properly informed about the safety concerns that Network Rail has about this railway crossing. It is important that this deficiency is addressed as the safety concerns are at the root of the Network Rail application for closure.

Network Rail has given a high risk rating to the crossing and the environs from their formal risk assessment, there are serious cases of misuse of the crossing by youths and there is already a perfectly good and safe alternative route to access the woods and the Downs, which together justify the application for closure of the crossing. This crossing is not needed and it is expedient to close it.

The Network Rail application to close the crossing in favour of using Hangers Way realises their Duty of Care (to the public) under the Health and Safety at Work Act. If Hampshire County Council were to rule to keep the crossing and footpath 3 open, then it could be interpreted that HCC accepts some responsibility for the safety of the public when using this crossing.



<p>Hampshire County Council</p>	<p>BURITON</p> <p>Application to Extinguish part of Footpath No.3 (level crossing)</p>		<p><small>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. MCS 100010188 2014</small></p> <p>Countryside Access Team Culture, Communities & Business Services Castle Avenue Winchester SO23 8UL</p>
	<p>SCALE 1:2,500</p> <p>DRAWN ES</p> <p>DATE 31.10.2014</p>	<p>◆◆◆◆◆ Footpath to be extinguished</p> <p>— Public Footpath</p> <p>— Public Bridleway</p>	



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Enquiries to

My reference

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Your reference

Date 5 December 2014

E-mail

Proposed Extinguishment of Part of Buriton Footpath No.3 (Level Crossing)

Thank you very much for your response to the consultation on the proposed extinguishment of part of Buriton Footpath 3. Your views will be presented in my report to Councillors at Regulatory Committee.

Thank you also for your covering letter of 10 November where you have expressed your concern regarding the content of the consultation letter.

The consultation letter was designed to provide an overview of the issues related to the proposed extinguishment, rather than present the detail of Network Rail's application form. We want consultation responses to be the views of individuals and organisations on the safety of the crossing and whether it is reasonably practicable to make the crossing safer, rather than a response to the detail of Network Rail's application.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

Director of Culture, Communities and Business Services
Karen Murray

12 December 2014

Re: Buriton Footpath Level Crossing – HCC Consultation Process

Thank you for your letter dated 5 December 14, which was received yesterday, and your response to my complaint about the Consultation Letter. You state, "We want consultation responses to be the views of individuals and organisations on the safety of the crossing and whether it is reasonably practicable to make the crossing safer, rather than a response to the detail of Network Rail's application".

I am afraid the concerns of my complaint about this HCC process remain. One question: how is the public going to express a view on the safety of the crossing when they have not been told about the safety hazards that are the subject of the Network Rail application?

Network Rail owns the crossing. They have a duty of care to the public under the Health and Safety at Work Act. They have realized that duty of care by means of a risk assessment according to the requirements of the Act. The crossing is rated one of the most hazardous in the country. There already is a perfectly good and safe alternative footpath under the railway lines, so Network Rail want to close the crossing in favour of the alternative footpath. Network Rail is doing the right thing.

It is entirely inappropriate for the HCC consultation process to try to build a case against the Network Rail safety assessment, particularly by just asking the public whether or not they feel safe at the crossing. I feel certain that, should there be an accident at the crossing, which is quite probable in view of the reported incidents there, lawyers would interpret the HCC process as wilful negligence.

I hope that the HCC Councillors in the Regulatory Committee will be made aware of this response to the Consultation Letter.

Yours sincerely,



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Date

31 December 2014

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Buriton Footpath Level Crossing Consultation

Thank you for your letter received by email on Friday 12 December 2014. This letter is further to the acknowledgement sent by email on Monday 22 December 2014.

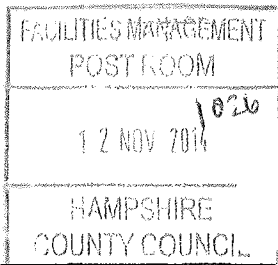
The public consultation conducted by Hampshire County Council for Buriton footpath level crossing effectively communicates Network Rail's safety concerns. It states that Network Rail have assessed the crossing as high risk, giving reasons for this quoted directly from Network Rail's application form (Table 1). The reported incidents of misuse are also quoted directly from Network Rail's application form (Table 2), as are Network Rail's investigation of the options for improving safety at the crossing (Table 3). The only considerations for an application under section 118A of the Highways Act 1980 (which Network Rail have used) is the safety of the crossing and whether it is possible to make the crossing safe.

Your suggestion that Hampshire County Council is trying to 'build a case against the Network Rail safety assessment' is quite wrong. The consultation process we have undertaken has been conducted fairly and reasonably. The results will contribute to the report that will go to the Regulatory Committee which must make a decision on the application.

I trust that this satisfies your concerns. I will contact you as soon as I am able to confirm the date that this will be taken to Regulatory Committee.

Yours sincerely,

Director of Culture, Communities and Business Services
Karen Murray



10 November 2014

Re: Extinguishment of Buriton Footpath Level Crossing

In Buriton there is a railway footpath level crossing, the features and location of which make it particularly dangerous to users. It is owned by Network Rail but it forms part of a short Right of Way. Network Rail have applied to HCC to close the crossing and HCC has distributed to Buriton residents a Consultation Letter in order to canvas opinion. Those opinions will be used to build a report for the Councillors who will determine the fate of the closure application. It is vitally important that the Consultation Letter truly represents the safety concerns of Network Rail, otherwise the public's responses and the report to the Councillors will not be representative.

However, the Consultation Letter omits to identify some important safety hazards that Network Rail describe in their application. Nor is their application appended to the letter. One example is that the crossing is not accessible to anyone who is not able bodied. There is a steep flight of steps up the embankment and there is no safe waiting space at the top. Another is the correlation between the playing field being used by unsupervised youths and the instances of misuse of the crossing by youths.

Furthermore, when a member of the public asks to see the Network Rail application, HCC treats the request as a Freedom of Information Request, which attracts several weeks delay. There is a lack of transparency issue here.

It looks as though the public are being denied access to the full safety concerns of Network Rail that are at the root of their closure application and consequently the public will not be able to consider them.

It appears that the safety of the public using this railway crossing is less important than keeping open the Right of Way. There is already a convenient and safe alternative route, the Hangers Way. The level crossing is not, in fact, needed.

I request that you look into this matter and ensure the public are properly informed about Network Rail's safety concerns.

For your information, my response to the Consultation Letter is enclosed.

Yours sincerely,



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Date

9 December 2014

E-mail

Proposed Extinguishment of Part of Buriton Footpath No.3 (Level Crossing)

Thank you for your letter of 10 November 2014 informing Hampshire County Council of your concerns regarding the content of the consultation letter to Buriton residents. The Chief Executive has passed it on to me to respond directly.

The purpose of the consultation letter for residents was to summarise the issues associated with the extinguishment application in a neutral, concise and accessible manner, in order to gain an understanding of the public's views on their safety when using the crossing, and whether the crossing could be reasonably made safer. Hampshire County Council wants to hear the views of Buriton residents based on their actual experience of the level crossing footpath and obtain evidence of any incidents or other factors they wish to draw to our attention. The consultation does not aim to seek public opinion on the detail of Network Rail's application as this is neither necessary nor appropriate for the purpose of gathering the views of individuals. Descriptions of the site that residents would already be aware of, such as the steep flight of steps up the embankment, were also not included in the consultation letter.

The information obtained from residents in response to the consultation letter is only one part of the content which will make up the report to Regulatory Committee. The role of the Hampshire County Council Officer is to provide members of Regulatory Committee with as much information from as many relevant sources as possible, in order for them to make a legally sound determination of the application to extinguish the footpath, with reference to the legal tests for the legislation under which the application is made.

Director of Culture, Communities and Business Services
Karen Murray

Network Rail's application is for a *rail crossing* extinguishment order to be made under section 118A of the Highways Act 1980. The legal test for this is that it is: 'expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.' Any order can only be confirmed if the authority is satisfied that it is expedient to do so, with particular regard being given to whether the crossing could otherwise reasonably be made safe. The authority must also be satisfied with the proposed arrangements for the erection and maintenance of appropriate barriers and signs.

You refer to the level crossing not being needed because there is an alternative route (Hangers Way). However, this is not relevant to Network Rail's application for a rail crossing extinguishment order because the alternative route is not part of the legal test for extinguishment under section 118A; it is only the route in question which should be considered. Extinguishment of a public right of way can be applied for under section 118 of the Highways Act 1980, where the legal test is that it is: 'expedient on the ground that the footpath, bridleway or restricted byway is not needed for public use', however this is not the legislation under which Network Rail have applied.

Your request to see a copy of Network Rail's application form was treated as a Freedom of Information request in accordance with advice received from our colleagues in Legal Services. It is regrettable that you feel this process has caused a lack of transparency, as this was certainly not our intention. Members of the public will have the opportunity to read the Committee report on line, attend the Regulatory Committee and make deputations if they wish and make representations in the event that an Order is made.

Thank you for enclosing your response to the consultation for the proposed extinguishment of part of Buriton Footpath No.3 (pages 1-5). This has been passed to the relevant Officer.

If you have any questions, please contact Esther Smeardon, the case officer for the application. I understand you already have Esther's contact details.

Yours sincerely,

16 December 2014

Re: Extinguishment of Buriton Footpath Level Crossing

Thank you for your detailed response to my letter, and similarly for the response from

You say HCC wants to understand the public's view on their safety at the crossing. However, HCC has failed to advise the public all the reasons Network Rail consider the crossing is unsafe. If, in the absence of all the facts, the public's view is that the crossing is safe, HCC will report that to the Regulatory Committee and it will be used against Network Rail's legally required risk assessment that has already determined the crossing is unsafe. This HCC process is flawed.

Had the Consultation Letter clearly advised the public that children have been using the playing field to access this hazardous crossing, and have been larking around there, I think every parent in Buriton would want that access to the railway crossing closed. Furthermore, the Consultation Letter failed to identify incidents at the crossing that were reported locally to Buriton Parish Council, but not to Network Rail – the so called unreported incidents in the Network Rail application. HCC was aware of these incidents. These omissions indicate HCC is far from neutral on this matter.

Similarly, Buriton Parish Council is also biased. They published an article in the Petersfield Post, 24 September 14, stating "There hasn't been a fatality on that crossing in living memory. We don't believe it's a safety issue". Apart from being a disgraceful statement, that was published after BPC were advised of the locally reported incidents, which included children playing at the crossing.

You say the alternative footpath cannot be considered because in this case the legal test excludes it: the crossing should be stopped up if it is expedient to do so in the interests of the safety of the public. Using your point, the legal test considers only safety. Yet the Questionnaire that accompanied the HCC Consultation Letter concerns more than safety. There are three questions directly about safety, one being do you feel safe at the crossing!!! Then three questions about frequency of use and two questions not at all connected with safety – should the crossing be closed and how inconvenienced would you be. Clearly HCC is planning to report factors other than safety to the Regulatory Committee.

Of course it is relevant that there is an alternative footpath so that closing the crossing will have no adverse effect on access to the other side of the tracks. There is a footpath tunnel under the tracks, also a right of way, just 50 metres away. This same situation was used to successfully close the footpath level crossing at Idsworth, not far away to the south of the railway tunnel.

Perhaps it is worth recalling the two teenager fatalities that occurred at the footpath level crossing at Elsenham, Cambridgeshire a while back. They were not larking about and stopped at the flashing warning lights. After the train passed, the lights were still flashing but the two girls proceeded to cross the tracks not noticing a train coming from the opposite

direction. This example shows that no matter what warnings are provided, people will still make fatal mistakes at footpath level crossings. Clearly the teenagers were responsible, for not paying attention. Yet the Judge ruled that Network Rail was to blame for failing in their duty of care to the public and they were fined £1 million.

It would be expedient to consider what a Judge could make of the safety aspects of this HCC Consultation Process if the HCC Regulatory Committee determines the crossing is safe when Network Rail has determined it is unsafe and there is a subsequent accident.

Yours sincerely,



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Date

9 January 2015

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Extinguishment Application for Buriton Footpath Level Crossing

Thank you for your letter dated 16 December 2014, received by email on 17 December 2014.

I am aware that you have been in regular correspondence with Esther Smeardon, the case officer for this application, and that Esther has already replied to many of the issues raised in your letter to me.

You have suggested that the process for reporting to Regulatory Committee is flawed because you believe that the public have not been presented with all the facts. However all local residents living within a kilometre of the crossing were sent a comprehensive letter setting out the details of the application and the basis upon which Network Rail is making it. Committee members will be made aware of the contents of the letter to residents.

You say that, 'HCC is far from neutral on this matter'. This is not the case. I am confident that our officers are approaching this application in a fair and reasonable manner with the intention of providing the Regulatory Committee with sufficient information to enable them to make an informed decision at the meeting.

Regulatory Committee is open to the public and the report will be available on line prior to the meeting.

Members of the public are able to apply in advance to speak or 'make a deputation' on a subject which is on the agenda for the meeting. Further information can be found on the Hampshire County Council website at the following address:
<http://www3.hants.gov.uk/factsheets/f2councilmeetings.htm>

Director of Culture, Communities and Business Services
Karen Murray

Continued/.....

- 2 -

I trust that your concerns on this matter have now been fully addressed.

Yours sincerely

COUNTRYSIDE SERVICE
19 NOV 2014
<i>ES</i>
Passed to: 17 November 14

Dear Sirs,

Re: HCC Process Complaint: Consultation Letter addressing the Application made by Network Rail to Extinguish the Buriton Footpath Level Crossing and Footpath 3.

Network Rail have applied to close the Buriton railway footpath level crossing on safety grounds. Hampshire County Council have distributed a Consultation Letter and Questionnaire to Buriton residents that asks for their views, which will then be considered by the HCC Regulatory Committee. The Consultation Letter omits important features of the NR Application, which was not appended to the Consultation Letter, and makes inappropriate remarks concerning the NR Application.

All these points play down the importance of Network Rail's safety concerns.

Complaint 1: The Consultation Letter, omits to state that Network Rail's safety concerns, in Table 1, originate from their Safety Risk Assessment, which uses the ALCRM risk model which gave the crossing a risk factor of C4, one of the highest. As owners of the crossing, Network Rail has a legal responsibility to carry out their risk assessment in accordance with the Health and Safety at Work Act. The omission plays down the status of the NR safety assessment.

Complaint 2: The Consultation Letter states that the dates of the reported incidents of misuse of the crossing are not known. The dates are not entered, but the Network Rail Transparency Team provided the following dates for the incidents.

29/07/2012 - Child lying on the crossing, train driver applied emergency brakes, driver badly shaken and unable to continue.

26/06/2013 - Children throwing stones at passing trains.

26/06/2010, 23/9/2008, 5/05/2008 - incidents of trespass from the crossing, including police arrests.

They also revealed additional incidents:

30/4/2010 - Puppy injured.

4/10/2013 - 4 children shining lights at passing trains

21/8/2014 - Man flashing at passing trains.

The HCC statement that the dates of the incidents of misuse are not known, plays down the significance of these occurrences.

Complaint 3: The following safety concerns in the Network Rail Application were omitted from the Consultation Letter. The omission of all these items plays down the significance of Network Rail's safety concerns that are at the heart of their application.

3A The list of unreported incidents. These are incidents recorded locally and passed to Buriton Parish Council but not recorded by train drivers.

3B Access to the crossing from playing fields frequented by unsupervised children and youths. The association of this access by children to the incidents of misuse of the crossing also by youths and children should be made in the Consultation Letter.

3C Buriton Parish Council plans to expand the playing field facilities for children and youths that will create a higher risk.

3D Buriton Parish Council plans to encourage more people to visit the chalk pits and thereby increase use of the crossing.

3E The Footpath 3 is not suitable for anyone who is not able bodied due to the uphill approach. (There is no footpath on the ground so the approach can be muddy and slippery). There is a steep flight of steps to ascend the railway embankment. (Then there is no safe waiting space at the top of the steps).

3F The significance of the sighting restrictions are omitted. The train horns need to be sounded, but there is a blanket ban on the horns between 23.00 and 07.00. There is an increased risk to users between those hours. (Trains from north, at the line speed of 85mph, arrive at the crossing 5 seconds after first sighting. Even in daylight hours, trains arrive at the crossing 9 seconds from first sight from south or horn from north. The time needed to cross the crossing for an able bodied user is 10 seconds. This is unacceptable).

Complaint 4: The Consultation Letter omits the advantages of the proposed alternative route and there are no questions about the alternative route in the Questionnaire to Buriton residents.

Network Rail state the following.

- There is no loss of amenity value.
- It is fundamentally safer, (using an underpass) no risk from sighting deficiencies and fast trains.
- It is more family friendly using an existing established footpath- Hangers Way and Shipwrights Way and should promote more use of these amenities.

Furthermore, the Consultation Letter states it is necessary to walk an additional 160m to use the alternative route. This assumes the same starting point. Many people will start from where the alternative route meets the High Street. There is a car park there and the Post Office in St Marys church. Starting there, the alternative route is 70m shorter than Footpath 3 route to the woods.

It is as though HCC does not wish the public to consider these advantages.

Complaint 5: It is completely inappropriate for HCC to inform Buriton residents that HCC has "looked at Buriton footpath level crossing to determine how safe it is for legitimate users". This statement was made in the letter that accompanied the Questionnaire. No safety assessment would be valid unless carried out in accordance with the Health and Safety at Work Act and only Network Rail should do that. Their risk assessment is a legally required document and must be accepted.

Complaint 6: Question 4 of the Questionnaire asks how safe people feel at the crossing. This is entirely subjective and will not lead to responses that have any value. As above, it is the legally required risk assessment that determines how safe the crossing is.

In conclusion, Network Rail's safety concerns, which are the whole reason for their Application to close the crossing, are not properly represented in the Consultation Letter. The public will not have had a chance to consider and comment on the main points of the Network Rail Application.

The main point is, for an exceptionally dangerous railway footpath level crossing to be in a public right of way is unacceptable, especially when a perfectly good and safe alternative route already exists.

An extract of Network Rail's Application follows, including references to these complaints.

Yours sincerely,

1. Rail crossing to be extinguished

a) Name and location of rail crossing, including OS grid reference.

Buriton footpath level crossing SU737199

b) Parish and number of affected public right of way, including OS grid reference.

Parish: Buriton

Path No: 3

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

25 metres

d) General description of path or way to be extinguished by reference to terminal points shown on an attached plan at a scale of not less than 1:2500.

The line coloured red on the attached plan 1 between points A and B.

e) Name and address of the owners, lessees and occupiers of the land on either side of any path or way to be extinguished, extent of ownership to be referenced on attached plan.

Landowner: The railway and surrounding land is owned by the applicant. The extent of the applicants' ownership is coloured in green on the attached plan.

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

~~YES / NO / NOT NEEDED~~ (*delete as appropriate)

These consents must accompany this application, on the form provided.

g) Give reasons for the proposed extinguishment of the rail crossing (use a separate sheet if necessary. Include information about:

i) 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);

Footpath number 3 starts on the high street and then runs down the side of the local primary school and into a recreation ground immediately before the gates to the railway. The recreation ground is in constant use which means there are a lot of children in the vicinity, a significant number of whom are unsupervised. Buriton Parish Council is currently working on an expansion plan for the recreation ground, which will undoubtedly draw more children of all ages to the recreation ground. The play area for younger children is also being considered for a move nearer to the railway, which will undoubtedly create a higher risk.

C3B

C3C

On the opposite side of the railway stand the chalk pits which have been opened within the last 3 years and are advertised to encourage more people to visit. This has caused an increase to the use of the level crossing despite there being an adequate safe alternative access down South Lane and Bridleway No 4.

C3D

There are 132 trains passing over the crossing per day.

The path is only suitable for able bodied walkers due to the presence of steep steps from the recreation ground leading to the level crossing, the approach to the crossing, which is uphill, and the general lay of the land in the immediate surrounding area. Network Rail

C3E

has recognised within the risk assessment that there are vulnerable users, including children, the elderly and the mobility impaired.

A census was carried out in October 2013. The results showed that the crossing is used from between 6 to 40 pedestrians per day, including unaccompanied children. Footfall at footpath crossings generally increases dramatically during the spring and summer months. It is therefore predicted that these numbers could increase.

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

The last risk assessment was carried out on 18 June 2013. On Network Rail's All Level Crossing Risk Model (ALCRM), which assigns a relative risk to each level crossing, the crossing scored a rating of C4. This comprises a high individual risk.

The key risk drivers are:

- Barely compliant sighting of approaching trains due to the tunnel entrance
- Insufficient sighting due to track curvature
- Fast and frequent trains
- Deliberate and accidental misuse
- Sun glare / Fog

The line speed is 85 mph in both directions. At line speed, the sighting of approaching trains in the up direction at this level crossing is deficient from the decision point. This is due to track curvature. The sighting in the down direction is compliant to Network Rail standards, albeit by just 3m. Buriton tunnel restricts further sighting. Accordingly, whistle boards are positioned upon approach on both lines to warn the users of an approaching train. Drivers are instructed not to sound horns during the quiet period. The night time quiet period refers to a blanket ban on the sounding of train horns during the night, between 2300 to 0700 hours, unless a person is seen at the level crossing. This means that, should the driver not use the horn, the protection provided by the whistle boards is reduced during this time and the location of the approaching train is purely by sight. As a result, there is an increased risk to the crossing user during these hours. Census information gathered shows early morning usage, particularly dog users, accessing the crossing before 7am. Additionally, the use of whistle boards has led to continuous stream of complaints of noise nuisance from local residents over a number of years.

Vegetation management is regularly undertaken to maintain current sighting distances.

There have been a number of reported incidents of misuse at the crossing including:

- A near miss with 3 children playing 'chicken' on the crossing
- A child lying on the crossing causing the driver of a train to emergency brake and come to a standstill. The driver was incredibly shaken and unable to continue
- Numerous instances of adults and children trespassing (where people use the crossing to access the track), including the British Transport Police making arrests and individuals entering the tunnel.
- Children throwing stones at trains.

Unreported incidents include:

- Children putting traffic cones on the track
- A pet being killed and a child running down the track to retrieve it
- Individuals sitting down on the crossing to have their photographs taken
- An adult and child picnicking on the steps leading to the crossing.

iii) 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;

There is no material loss of amenity value to users of the public footpath by the proposed extinguishment. Given the location of the level crossing it is considered that the alternative route using the under bridge on South Lane is fundamentally safer, as the operational railway will no longer need to be crossed. It will be more family friendly and, in fact, should promote more use of the walking route and amenities in this area. The route to South Lane passes village amenities rather than going through the recreation ground and the under bridge is approximately 70 metres from Buriton level crossing as the crow flies. From the entrance of the recreation ground on Buriton High Street it is approximately 430 metres to the under bridge on South Lane, whereas it is approximately 270 metres to Buriton footpath crossing.

The popular Shipwrights Way, advertised by Hampshire County Council does not pass over the foot crossing and is promoted via a nearby underpass, which also accommodates Bridleway No 4. As it is not possible to legally divert rights of way onto existing rights of way, this has necessitated an extinguishment application under s118A. In reality users of the footpath would simply move over to using the under bridge and the safety risks would be eliminated completely. Pedestrians would no longer be at risk from sighting deficiencies and fast trains whilst crossing the operational railway.

- iv) 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;
- v) the estimated cost of any practicable measures identified under iv) above;

Several options have been investigated and costed by Network Rail. Their suitability is discussed below.

Due to the available space and land boundaries a ramped footbridge is not considered possible. The structure would be in the vicinity of 0.5km long and would encroach on several land boundaries, necessitating substantial land purchase. A ramped structure would not be in-keeping with the area. A ramped bridge would cost in the region of £1,500,000 - £2,500,000 excluding any land purchase.

Due to the topography of the land and land boundaries it is not considered that a stepped footbridge could be provided at the site of the level crossing. Land purchase would be required to facilitate footings and the structure would be excessively large due to the steep embankments. A stepped footbridge would cost in the region of £450,000 - £800,000.

Network Rail is a public sector organisation. Our stated purpose has been to deliver outstanding value for rail users and taxpayers by creating a better railway for a better Britain. The Office of Rail Regulation exists largely to help hold us to account for delivery of our commitments. The company is accountable to Parliament for its finances and its activities. For this reason, Network Rail has to account for every penny spent and justify the cost of any option pursued. Network Rail only has limited funds to implement safety



*Culture, Communities and Business Services
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Telephone 0845 6035636 (call charges apply
– please see www.hants.gov.uk/contactus)
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www.hants.gov.uk/countryside

Enquiries to

My reference

Direct Line

Your reference

Date 11 December 2014

E-mail

Process Complaint: Consultation Letter for the Proposed Extinguishment of Part of Buriton Footpath No.3 (Level Crossing)

Thank you for your letter of 17 November 2014 informing Hampshire County Council of your complaints regarding the content of the consultation letter to Buriton residents. As your complaints are listed individually, this response will address each of your numbered complaints in turn below. This letter is also the response to your recent telephone call to the Corporate Complaints Team.

Response to Complaint 1

The consultation letter was designed to be accessible to all by using non-technical language and being as concise as possible. The consultation letter clearly states that Network Rail has made their application 'in the interests of public safety' and that 'Network Rail assesses Buriton footpath level crossing to be high risk' (reasons are listed).

Response to Complaint 2

The consultation letter quoted the reported incidents of misuse from Network Rail's application form, which omitted dates. Acknowledging that some residents would be interested to know when these incidents occurred, the consultation letter stated 'dates unknown' to demonstrate that the information would have been included if made available by Network Rail. Obtaining this information would have caused unnecessary delay.

Response to Complaint 3

The consultation letter was designed to be neutral and factual. For these reasons the following issues were omitted: unreported incidents, associations drawn between the recreation ground and misuse by children, plans which the Parish

Director of Culture, Communities and Business Services
Karen Murray

Council may implement at the recreation ground or the chalk pits. Descriptions of the site already known to residents were also omitted in the interests of brevity.

Response to Complaint 4

The consultation letter mentions the alternative route without focusing on it, because an alternative route, whatever its merits, is not part of the legal test under section 118A of the Highways Act which Network Rail have used to make their application. An application for a rail crossing extinguishment order under section 118A of the Highways Act 1980 only considers the route in question, applying the legal test: 'expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.'

Response to Complaint 5

Network Rail's application for a rail crossing extinguishment order under section 118A of the Highways Act 1980 requires Hampshire County Council to consider how safe Buriton footpath level crossing is by applying the legal test: 'expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.' Network Rail's assessment of the crossing is fundamental to this case, and members of Regulatory Committee will be provided with as much information from as many relevant sources as possible, in order for them to make a legally sound determination of the application to extinguish the footpath.

Response to Complaint 6

The consultation questionnaire was designed to gain an understanding of the public's views on their safety when using the crossing because Hampshire County Council wants to understand the actual experience of those who use the level crossing footpath. Results of this consultation are a relevant source of information for members of Regulatory Committee.

If you have any questions, please contact Esther Smeardon, the case officer for the application. I understand you already have Esther's contact details.

Yours sincerely