

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	25 January 2017
<b>Title:</b>	Application for a Rail Crossing Diversion Order for part of Chandlers Ford Footpath 707b
<b>Reference:</b>	8028
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** Harry Goodchild

**Tel:** 01962 846044

**Email:** harry.goodchild@hants.gov.uk

#### 1. Executive Summary

- 1.1. The purpose of this paper is to consider an application to divert part of Chandlers Ford Footpath 707b ("Footpath 707b") at a point where it crosses a railway line approximately 200 metres north of Chandlers Ford station. The application, which seeks to divert the public footpath away from the 'at grade' crossing and onto a stepped pedestrian bridge, has been made by Network Rail ("NR") in the interests of the safety of members of the public.
- 1.2. If it is considered expedient in the interests of public safety to divert that part of Footpath 707b which crosses the railway, then Members' authority is required to authorise the making of an Order under s119A(1) and (2) of the Highways Act 1980 for this diversion. Issues such as whether or not the crossing could be made safe are not relevant when considering whether an Order should be made in the first instance.
- 1.3. If a diversion Order is made, it must then be formally advertised. If objections are received at this stage, the Order must be referred to the Secretary of State, who will then consider whether or not the Order should be confirmed. If no objections are received following this advertisement, then Members will themselves need to consider whether or not to confirm the Order.
- 1.4. The grounds for *confirming* an Order, as set out in section 119A(4) of the 1980 Act differ from those concerning the *making* of an Order, and require that consideration is given to whether the existing crossing can be made safe for public use.
- 1.5. The focus of this report (and the decision Members are asked to make), relates only to whether or not the test set out in Section 119A(1) of the 1980 Act (alluded to at 1.2), is met. However, issues relevant to the confirmation stage have also been included in this report, for Members' information.

- 1.6. Network Rail has provided an assessment setting out its reasons for seeking the diversion which is now sought. Officers have consulted key stakeholders on the proposal, and whilst this has not resulted in any opposition to the route being diverted, some responses have questioned whether the replacement bridge will have a detrimental effect on users with mobility issues. This point notwithstanding, and in recognition of the legislative requirements prescribed by Section 119A(1) and (2), officers consider that it is expedient to make the requisite Order to divert the crossing in the interests of public safety, and recommend that such an Order is made.

## 2. Legal framework for the decision

### ***Consideration of whether an Order should be made***

- 2.1. Orders for the diversion of footpaths, bridleways or restricted byways crossing railways may be made under Section 119A of the Highways Act 1980, as follows:

- (1) *This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, other than by tunnel or bridge, should be diverted (whether onto land of the same or another owner, lessee or occupier).*
- (2) *Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order -*
  - (a) *Create, as from such as date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and*
  - (b) *Extinguish, as from such date as may be specified in the order...the public right of way over the crossing and so much of the path or way of which the crossing forms part as appears to the council requisite aforesaid*
- (3) *An order under this section is referred to in this Act as a 'rail crossing diversion order'.*

- 2.2. For clarity of the term 'expedient', it may be noted that in a Supreme Court decision on *The Health and Safety Executive v Wolverhampton City Council [2012]* it was held that "*The word 'expedient' implies no more than that the action should be appropriate in all the circumstances.*"

### ***Consideration of whether an Order, if made, should be confirmed***

- 2.3. Such orders may be confirmed under Section 119A of the Highways Act 1980 as follows:
  - (4) *The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to all the circumstances, and in particular to –*

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

### **Other Legislation / Government Reporting**

- 2.4. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 set out a 'Form of Request', to include:
- (i) the use made of the path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information;
  - (ii) the risk to the public of continuing to use the crossing and the circumstances that have given rise to the need to make the Order;
  - (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;
  - (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);
  - (vi) the barriers and/or signs that would need to be erected at the crossing, assuming the Order is confirmed.
  - (vii) the safety of the alternative right of way to be created by the order relative to the existing rail crossing.
- 2.5. NR's work is governed by the Health and Safety at Work Act 1974, which places a statutory duty on them in relation to:
- (a) securing the health, safety and welfare of persons at work;
  - (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work.
- 2.6. On 7<sup>th</sup> March 2014 the House of Commons Transport Committee (HOCTC) published a report on safety at level crossings. The report says that level crossings in the UK are generally safe, with improvements seen in the five years from 2009, NR having committed itself to reducing risk at level crossings by 25% over that period. The HOCTC identified that NR has been able to improve safety by closing level crossings, but further improvements may be progressively more difficult to achieve.
- 2.7. The HOCTC indicates that there are significant safety risks, with level crossings representing half of the non-suicide, non-trespass fatality risk on the railway. It sets out that the aim should be to aim to eliminate accidental deaths at level crossings with a recommendation that the independent safety and economic regulator for Britain's railways, the Office of Rail and Road (ORR), adopt an explicit target of zero fatalities at level crossings from 2020.

The ORR explains that this is not binding, but they find it significant and highly influential.

- 2.8. In its 2014 report, the HOCTC made reference to a report published by the Law Commission the previous year, which recognised that decisions about level crossings involve striking a balance between the convenience to communities in being able to cross a railway and public safety. The Law Commission recommended that consideration of the closure of level crossings should be based on a public interest test, considering a “non-hierarchical” and “non-exhaustive” list of the following factors, including (but not limited to):
- the safety of the public;
  - convenience of the public;
  - efficiency of the transport network (including the network of public paths);
  - cost of maintaining the crossing;
  - the need for the crossing and its significance for the local community (including the protection of heritage);
  - the costs and environmental impact of any works needed to replace the crossing or upgrade other crossings.

The HOCTC also called for the addition of a public safety test with respect to any alternative or diversionary route.

### **3. Parties to the Application**

- 3.1. The applicant in this instance is Network Rail, which owns all of the land affected by this proposal.

### **4. The Existing Route and surrounding area**

- 4.1. NR had already programmed the work to construct the new bridge at the time this application to the County Council, and so took the decision not to wait for a formal diversion of the crossing before constructing the alternative route (NR is aware that if the application is ultimately unsuccessful, the current line of FP 707b will need to remain open for use). For this reason, the character of the route described at 4.3 is no longer in evidence on the ground, but it is nevertheless particularly relevant to Members’ decision (see Appendix 1 for photographs showing a ‘before and after’ comparison).
- 4.2. Footpath 707b is situated approximately 200 metres to the north of Chandlers Ford station. It is about 140 metres in length, and forms a key link between the Valley Park estate and the rest of Chandlers Ford. The section that is the subject of this application is approximately 22 metres in length
- 4.3. The section to be diverted commences at the junction with Sutherlands Way (Point A on the Committee Plan) and terminates on the south side of the line (Point B). The proposed diversion would route the path over a new footbridge

via Points C and D. Previously, when approaching the crossing from the east (Point A), users had to negotiate a stile and three shallow steps, followed by two steeper steps which took them up to the trackside. The crossing itself is approximately six metres in length, running over solid wooden boards to meet steep timber steps on the western side of the track bed (these steps have been installed relatively recently, presumably as an 'ad hoc' improvement). The path then crossed another stile before proceeding along an earth path to a stepped wooden footbridge crossing Monks Brook. Hereafter the path proceeds westward to meet a surfaced path running around the perimeter of the Valley Park estate. Signs with the wording "Stop, Look, Listen - Beware of Trains", which were displayed on each side of the track, can be seen at Appendix 1 (one of these signs is still in situ on the east side of the track). Other than the aforementioned stiles, prior to NR's works there were no barriers restricting access onto the line.

- 4.4. Footpath 707b provides an important link between the communities of Chandlers Ford and Valley Park, affording access to local shops and the local surgery, and it is also used by children travelling to and from local schools. The nearest alternative access across the railway line is the B3043 Bournemouth Road, situated on the south side of Chandlers Ford station (approximately 430 metres south-east of Footpath 707b). The nearest crossing point to the north is provided by a footbridge forming part of Chandlers Ford Footpath 6, which lies 830 metres to the north-west. Information provided by NR indicate that the crossing is well-used (approximately 130 pedestrians and cyclists per day).
- 4.5. Site visits to enable Members to view the crossing layout and observe the passing of trains over the crossing took place on 9<sup>th</sup> January 2016.

## **5. Details of the Application**

- 5.1. NR has made an application under section 119A of the Highways Act 1980, as shown in Appendix 2.
- 5.2. NR uses the All Level Crossing Risk Model ("ALCRM") to assess risk at level crossings. ALCRM measures two different levels of risk, collective risk and an individual risk of fatality. Collective risk is a measure of the total harm or safety loss and is expressed in terms of fatalities and weighted injuries per year. Collective risk is reported by ALCRM in a simplified form expressed as a number ranked from 1 to 13 with 1 representing the highest risk. The risk to an individual is presented as an individual risk of fatality per year of use of the level crossing. ALCRM calculates this risk as the 'probability of fatality' expressed by letters A to M with A representing the highest risk. The current ALCRM risk score for the Chandlers Ford crossing is C4, representing a high individual risk (C). The route carries a low collective risk (4), a reflection of the fact that the likelihood of a pedestrian causing collective injury at the crossing is minimal.
- 5.3. NR uses the ALCRM risk score plus additional information including numbers of train movements and levels of misuse to rank crossings on their network, the higher the ranking the higher priority is given by NR. Using this system,

Chandlers Ford footpath crossing ranks 10<sup>th</sup> highest out of 172 footpath crossings on the Wessex Route, and 66<sup>th</sup> highest risk out of all 346 level crossings on the Wessex Route (NR has advised that using *all* crossing figures to compare footpath crossings with road crossings is not helpful, as the risk score of a road crossing will generally be higher, including as it does the risk of derailment to a train caused by vehicle incursion). Chandlers Ford level crossing has been identified as a high risk footpath crossing on the Wessex Route due to the fact that it is a passive crossing with no protection other than users obeying the signage, a risk exacerbated by the number and speed of trains that pass through the crossing and the number of users traversing the crossing. NR's narrative risk assessment is included in Appendix 3.

- 5.4. NR has identified the following as the primary reasons for seeking the diversion:
- (a) The access to the line at this point has a history of trespass and/or misuse, and near miss events.
  - (b) A large number of users (133 counted during a 24 hour period during school holidays), with a high proportion of use dusk/evening use by runners and dog walkers. Also a high proportion of use by 'vulnerable users' (cyclists carrying bikes, children and elderly users), thus increasing the average 'traverse time' specified in NR's risk assessment.
  - (c) The proximity of Chandlers Ford station to the crossing results in a speed differential between trains leaving or passing through the station, which may create a false perception of risk amongst users.
- 5.5. The risk assessment cites a number of recently reported incidents of misuse at the Chandlers Ford crossing. These are:
- 12<sup>th</sup> March 2014 – Near Miss – 19.07 from Romsey to Salisbury reported near miss with male and young child.
  - 14<sup>th</sup> April 2014 – Trespass - 12.30 from Cardiff Central to Portsmouth Harbour reported four youths standing on the crossing .
  - 24<sup>th</sup> August 2014 - Trespass - two males reported trespassing and hiding in bushes.
  - 11<sup>th</sup> July 2015 – Near Miss - 17:56 from Salisbury to Romsey reported near miss with two girls crossing track in front of the train.
  - 11<sup>th</sup> October 2015 - Hampshire Police reported two males lying on the track.
- 5.6. The incidents reported do not include any accidents, injuries or deaths.

- 5.7. NR has investigated, and discounted, the following options for improving safety at Chandlers Ford crossing (other options considered are described in Appendix 3):

Option considered by Network Rail	Network Rail comments
<b>Installation of Miniature Signal Lights</b> (estimated cost - £300k)	<ul style="list-style-type: none"> <li>No cost/benefit ratio to proceed with this option</li> </ul>
<b>Ramped Footbridge</b> (estimated cost - £2.5m-£3m)	<ul style="list-style-type: none"> <li>There are significant space constraints on the site, and fitting a 1:20 ramped structure onto the site would be unfeasible.</li> <li>The structure would be visually intrusive for the local residents and would result in significant loss of privacy.</li> </ul>
<b>Subway/Tunnel</b> (estimated cost - £76k-£160k per sqm)	<ul style="list-style-type: none"> <li>Not suitable due to the long timescales, and the disruption it would cause to services.</li> <li>Subways often attract antisocial behaviour (vandalism, graffiti, discourages usage at night time).</li> <li>Unsuitable due to the lack of land available adjacent to the level crossing.</li> <li>High maintenance when compared with footbridges, and at high risk of flooding</li> </ul>
<b>Stepped Footbridge with Lift</b> (£3m-£4m)	<ul style="list-style-type: none"> <li>Unsuitable because the level crossing is not at a manned station, therefore the lifts cannot be monitored. Furthermore, there is an operational risk of entrapment and in an event of failure there will be no alternative crossing for wheelchairs and bicycles. This is not a safe option.</li> </ul>

- 5.8. Although not strictly relevant to the legal test set out in Section 119A(1), Members may find the following information (provided by NR) of interest:

- The bridge's parapet is comprised of two elements. The upper section has a dual purpose privacy screening/anti-missile barrier which is constructed from a Bilbao expanded mesh (height 750mm). Bridge users cannot see directly through this mesh due to the angle of the perforated holes, thus decreasing the temptation to throw anything onto the tracks. In addition, the size of the mesh holes is small enough to deter bridge users attempting to climb or hang on the parapet. The total height from the bridge deck/stair treads is 2m (0.2m above the standard parapet height). The lower balustrade section of the parapet has two yellow circular handrails with integrated LED lighting situated on the underside.
- NR has planted additional trees and shrubs to compensate for vegetation clearance that took place during the installation.
- The ground under the footpath, which was previously prone to subsidence, has been re-levelled to mitigate the risk of accident.

- The stiles on both sides of the line have been removed and the approaches to the bridge have been resurfaced with tarmac. Stepped access has been installed on the Monks Brook approach, and a staggered barrier installed on the Sutherlands Way approach to encourage cyclists to dismount. Both the approaches and the bridge are surfaced with anti-slip material.
- Cycle gutters have been installed on both bridge staircases, and the approach to Monks Brook.
- Privacy screening has been installed on the residential side of both staircases to avoid intrusion to lineside neighbours
- Three sustainable lighting columns have been installed to improve visibility for users. These are sensed to save energy and minimise disturbance to nearby residents.

## **6. Consultation**

6.1. The following individuals and bodies have been consulted on this application (responses are included, where they have been received):

6.2. Open Spaces Society

No objection.

6.3. The Ramblers

No objection, subject to having sight of the proposed diversion order.

6.4. Eastleigh Borough Council

Supports the application. It states that:

*“We have discussed the possibility of making the footbridge DDA compliant, however due to the required height of the bridge and the gradients either side it would need to have ramps of around 125m either side, something that would be huge and I’m sure very unpopular with neighbours. Adding to this, as the access across the level crossing is not currently DDA compliant (there are stiles and steps) therefore there is no requirement for the new footbridge to be made to DDA standards.*

*Issues of the footbridge overlooking properties on Sutherlands Way and the need for adequate lighting on the footbridge have already been discussed with Network Rail and we believe that the plans have addressed these concerns.”*

6.5 Chandlers Ford Parish Council

*“Whilst the Council welcome improvements to safety at foot crossings over the railways, they feel that there has been inadequate investigation into the alternatives to a footbridge that would be of benefit to the very young, elderly and infirm that currently use the crossing. It is the belief of the Parish Council that the option of a subway has not been fully explored and thus, for reasons*

*of accessibility, the current Right of Way should remain in place until such time as the accessibility issues are properly resolved.”*

6.6 Valley Park Parish Council

Supports the application.

**7. Consideration of Section 119A(1): Whether an Order should be made**

- 7.1. Section 119A(1) of the 1980 Act sets out that before making an Order, it must appear to the council that it is “expedient in the interests of the safety of members of the public using it, or likely to use it” that the footpath crossing the railway should be stopped up.
- 7.2. Safety should be considered not only in relation to the physical features of the crossing, but also where risks arise from the way in which users are using the crossing (including misuse).
- 7.3. As noted in paragraph 2.4 above, the 1993 regulations set out that in making its application, NR should provide information on a number of matters, including “...the effect of the loss of the crossing on users, in particular whether there are alternative rights of way, [and] the safety of these relative to the existing rail crossing...” NR has provided this information in its application form and in subsequent submissions to the County Council.
- 7.4. It is hazardous for pedestrians to walk across railway lines, even when adequate precautions are in place. In the case of the Chandlers Ford crossing, no accidents have occurred on or near the crossing, although NR has recorded a number of incidents and near misses.
- 7.5. None of the responses to the consultation (see Section 6) make any objection to the principle of removing the ‘at grade’ crossing, but concerns have been raised regarding the suitability of the alternative route over the footbridge, and how easily it may be accessed by users of varying ability. This issue is not relevant to the legal test under Section 119A(1), although it will be a relevant consideration in the event that the County Council is in a position to confirm the Order.
- 7.6. NR has provided significant evidence that the current crossing presents a risk to the public. If Members agree that diverting public footpath rights away from the at grade crossing would remove that risk, then it can be concluded that it would be interests of the safety of those using the crossing to stop up the footpath.
- 7.7. Officers consider that, on balance, the requirements of s.119A(1) HA 1980 have been met.

**8. Further information**

- 8.1. If a Rail Crossing Diversion Order is opposed, then it must be submitted to the Secretary of State for determination (following an exchange of written representations, a public hearing or public inquiry). Alternatively, a decision may be made to abandon the opposed Order.

- 8.2. If a Rail Crossing Diversion Order is made and is *not* opposed, then the County Council may confirm the Order, *if* it is satisfied that it is expedient to do so having regard to all the circumstances.
- 8.3. The primary focus of this confirmation stage is the practicability of making the crossing safe for use by the public, and the arrangements for barriers and signs. Other matters may also be considered.
- 8.4. The 1993 regulations require that an applicant demonstrates that consideration has been given to what other steps might be taken to “remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing.” NR has provided this information (see 5.7).

## **9. Recommendations**

- 9.1. That a Rail Crossing Diversion Order be made to divert Chandlers Ford Footpath 707b between points A and B on the Committee Plan.
- 9.2. In the event that such an Order is made and is opposed, that the Order be referred to the Secretary of State for determination, with the County Council adopting a neutral stance.
- 9.3. In the event that such an Order is made and is *not* opposed, that the matter is again brought before the Regulatory Committee for further consideration.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	

<b>OR</b>
-----------

<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: its part of our Regulatory functions upon which a decision is required.</b>
--

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
General Correspondence	Hantsfile Reference: Orders by Parish\Chandlers Ford
PPO Proposal File: Chandlers Ford Footpath 707b	Countryside Access Team, Countryside Service, Castle Avenue, Winchester, SO23 8UL

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

#### **Equalities Impact Assessment:**

The proposal may have an impact on equality in the area, but this issue is not relevant to the making of an Order under Section 119A.

### **2. Impact on Crime and Disorder:**

The proposal may reduce crime and disorder in the area, although access to the railway could be gained at other nearby locations, or even created by illegal access.

### **3. Climate Change:**

The proposal is unlikely to have any significant environmental impact.