

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Hollingbourne Village Hall, Eyhorne Street, Hollingbourne ME17 1TR on Tuesday, 23 January 2018.

PRESENT: Mr S C Manion (Vice-Chairman in the Chair), Mr P J Homewood and Mr J M Ozog

ALSO PRESENT: Mrs S Prendergast

IN ATTENDANCE: Ms M McLauchlan (Definition Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. **Membership**
(Item 1)

The Panel noted that Mr I S Chittenden had sent his apologies for the meeting and that Mr J N Ozog had agreed to serve on the Panel after the agenda papers had been published.

2. **Application to divert part of public footpath KH183 from the at grade foot crossing to the existing stepped footbridge at Hollingbourne Railway Station in the Borough of Maidstone**
(Item 3)

(1) The Panel Members visited the application site before the meeting. The visit was also attended by Ms Nicola Mee and Mr Toby Broyad from Network Rail, Mr Patrik Garton, the local Borough Councillor and Mrs Shellina Prendergast (Local Member).

(2) The Definition Officer began her presentation by saying that the application to divert part of public footpath KH183 at Hollingbourne had been made by Network Rail, in the interests of safety, to remove the at grade foot crossing from the railway line and to run the path over the existing station stepped footbridge. The key risk drivers were the Insufficient sighting or warning time of approaching trains; fast and frequent trains; sun glare (although the crossing did not rely solely on sighting); crossing configuration; and proximity to Hollingbourne station.

(3) the Definition Officer went on to say that although there had been no recorded incidents of near misses or fatalities at the level crossing, Network Rail considered there to be a likelihood of a serious incident due to the lack of visual warning of approaching trains, leading to insufficient time for users to pass over

the level crossing. The sighting could not be improved, and the proximity of the level crossing to Hollingbourne Station reduced the options available to Network Rail to carry out works or to install other mitigation measures. It was for these reasons that Network Rail felt that the closure of the crossing and the proposed footpath diversion to the adjacent station footbridge was the best option.

(4) The Definition Officer then quoted the Legislation relating to the diversion of a public path. This was contained within Section 119A of The Highways Act 1980:

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

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

(5) Government Guidance contained in Rights of Way circular (1/09) Guidance for Local Authorities stated:

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

(6) The Definition Officer then set out the responses of consultees. Councillor Patrik Garten had objected to the proposal, stating there are no recorded incidents or near misses at the crossing. He believed that as Hollingbourne station was not suitable for the disabled, the proposal’s advantages did not reasonably outweigh the consequential problems. Hollingbourne had a high proportion of elderly citizens who would be affected.

(7) Maidstone Borough Council had no objection to the proposal, whilst Hollingbourne Parish Council had written to Mid Kent Planning, requesting that the application be refused as it was concerned about the access given for people with limited mobility. No responses had been received from the Open Spaces Society, the Ramblers or the British Horse Society.

(8) The Definition Officer said that the West Kent Area PROW Manager had agreed with the proposal. He had commented that he would be uneasy about replacing an at grade crossing with a stepped bridge in most circumstances, but that in this case there was currently no practical access to the site for less mobile users. Similarly, the North Downs Way Trail Manager had no objections to the proposals in light of the safety issues outlined, but had expressed concerns about reduced access for people with mobility issues.

(9) The Definition Officer turned to the views of local residents. Sarah Baxter had objected to the proposal, saying that the path was in regular use and part of the access from Hollingbourne to Broad Street. The area was known for its walks and a number of regular walkers visited the village and the access point as it was well known and very useful. Many people used the crossing with dogs, so safety would not be improved if the footpath were accessed via the station. She considered Network Rail's core reason for the proposal to be spurious as it could be applied to every such crossing. This particular rail crossing was less hazardous than crossing the road in Hollingbourne.

(10) Philip Smith had objected to the proposal, but seemingly on the misunderstanding that the proposal was just to close the crossing rather than to divert the path. He had objected to the closure but had not responded further when it was clarified that the path would be diverted.

(11) Philippe Niebergall did neither object nor agree with the proposal, but had asked why Network Rail wished to close the footpath as it was the gateway to a wonderful area of outstanding natural beauty. He too had not responded further following clarification that the footpath would be diverted.

(12) Greg Sharpington had objected to the closure of the crossing, saying that he, his friends and family used the crossing frequently throughout the year because it was the obvious walk between their house and that of his parents. Numerous people in Broad Street used the crossing, as did hundreds of ramblers. The crossing was part of the village's heritage and history and should certainly not be closed. Upon receiving clarification that the proposal was to divert the path and not just close the crossing, Mr Sharpington had expressed relief that there would still be a crossing but felt it would not be the preferred option of villagers from Upper Hollingbourne, Broad Street. He had said that he was not aware of any incidents and that he considered the sight in both directions along the track to be good. He had further commented that a bridge could also be dangerous, especially in winter, and that it would mean that some people would not be able to use it. He had given his mother as an example of someone who needed to use a stick and hated steps, but who could walk for miles on flat terrain.

(13) James Johnson broadly supported the proposal but expressed concerns that future maintenance of the path might become neglected. Robert Edwards had not objected but asked for Network Rail to subsequently remove the need for trains to sound their horns.

(14) John Colley had objected to the proposal because the proposed diversion section was impassable during the winter months between points E and F. The ground became waterlogged and then deeply pugged by the movements of cows between fields and impassable until it dried out in late spring. The proposed diversion through Hollingbourne station would discourage use of footpaths KH185 and KH183 which emanated from points A and B. Hollingbourne station was an unstaffed and semi derelict remote station which suffered vandalism, thefts, damage in the car park and youths hanging around. The proposed

diversion presented an increased threat to the personal safety of walkers, some of whom would find it too intimidating to use.

The extinguishment was unnecessary because these sections did not cross Network Rail's property. KCC had a duty "to assert and protect the rights of the public to the use and enjoyment" of these paths and it would be a dereliction of duty to quietly extinguish them under cover of Network Rail's application.

(15) Jerry Whitmarsh from Linton Parish Council had objected to the proposal stating that he had led walking groups over the crossing many times without incident, and that as far as he was aware, no incidents had ever been reported. He therefore felt it could not be that unsafe.

(16) The Definition Officer reported the following correspondence from Mr Whitmarsh which had been received after publication of the agenda papers:

"Thank you for keeping me informed regarding this issue. I have meetings on 23rd and it is not clear whether I shall be free to attend the site meeting or panel meeting, but if I can I will do.

In the meantime, I am in full support of the report you enclosed and with its conclusions. One or two more comments:

- I think there is nothing particularly unusual about this crossing: both this line, from Victoria to Ashford, and also the Medway Valley line, have a number of crossings with sightlines that are worse, or at least no better. If this were to be allowed, there would no doubt be many more such requests.*
- The inconvenience of the alternative route offered was indeed a factor contributing to me responding. Sorry if that was not clear.*
- In addition to being Chairman of Linton Parish Council I am also Leader of the Linton Walkers, and as such a regular user of most of the available rail crossings in Mid Kent as we do more than 90 walks per year in this area."*

(17) The Definition Officer then explained that initially the County Council had declined to accept this application, concluding that there was no real evidence, making the safety case extremely weak. In addition, the statements made to justify the safety case were considered to be hypothetical and based on assumption.

(18) The County Council had then been asked to reconsider accepting the application as the Level Crossing Manager was becoming increasingly concerned about the insufficient sighting. An Officer's site visit was undertaken, resulting in a decision to accept the application, although it was considered very marginal.

(19) The Definition Officer said that during the consultation period, a number of people had questioned the safety case, pointing out that there had been no recorded incidents or near misses. Although the available sight lines in three of the four directions were considered to be insufficient and not compliant with Network Rail's criteria, those using the crossing felt that they were adequate. One

person had commented that the rail crossing was less hazardous than crossing the road in Hollingbourne and it had also been pointed out that bridges could also be dangerous.

(20) The Definition Officer said that the consultation responses, particularly from those people who frequently used the crossing, had done nothing to persuade officers of the County Council that the level crossing at Hollingbourne was so unsafe that it required closure.

(21) The Definition Officer then set out the most important legal tests set out in section 119A of the Highways Act 1980. The first of these was *whether the right of way will be reasonably convenient to the public*. She said that it was proposed to re-route the footpath over the existing station footbridge. As a result, the length of the path would increase significantly. No one who responded to the consultation had commented on this matter, which therefore indicated that it was not an issue in itself. However, the bridge had raised comments from many people. The main point raised was how the proposal would affect those who were disabled or had limited mobility, with the Parish Council and Borough Councillor expressing particular concerns for local residents. As there were steps on both sides of the level crossing and the fields through which the footpaths then passed were known to become extremely muddy in winter, Network Rail considered that the footpath could only be used by those who are able-bodied. It therefore considered that the proposed diversion via the station footbridge should not be seen as preventing use to a route that should be accessible to all. However, although there was no practical access to the site for some less mobile users, the diversion onto the bridge would exclude some people from being able to use the footpath who were currently able to do so. Whilst wheel chair users could not use the existing crossing, someone who could walk a good distance on the flat using a stick would not be able to use the stepped bridge.

(22) The second test was *the safety of the diversion, particularly where it passes along or across a vehicular highway*. The Definition Officer said that the proposed new route would run over the existing stepped station footbridge. Although people were more concerned about the impact the diversion would have on people's ability to use the bridge, it had also been stated that stepped bridges themselves carried a danger, especially in poor weather.

(23) The Definition Officer then set out her conclusions. She said that the proposal has been put forward by Network Rail on the grounds that the available sight lines from the level crossing were considered to be non-compliant with their criteria. It was their view that there was a likelihood of a serious incident occurring due to the lack of visual warning of approaching trains, providing insufficient time for users to pass over the level crossing. Users of the crossing, however, felt the sight lines were good drew attention to the fact that there had been no recorded incidents, near misses or fatalities at the level crossing. They had also made the pertinent point that the stepped bridge would prevent some users from being able to use the new route whereas they were currently able to use the existing route. This meant that the proposed diversion would not be as convenient.

(24) The Definition Officer said that she was not satisfied that it was expedient in the interests of the safety of users, or likely users, of the crossing that the level crossing should be closed. Furthermore, the proposal to divert the footpath over the existing station footbridge would reduce accessibility for some users of the path to the extent that they would no longer be able to use it. She therefore recommended that the County Council should decline to make the Order.

(25) Mr Patrik Garton (Maidstone Borough Councillor) said that the footpath linked upper Hollingbourne and lower Hollingbourne in Eyhorne Street. It was also used by older people for recreational walking. The footpath provided access to an Area of Outstanding Natural Beauty, encouraging tourism in the process.

(26) Mr Garton then said that the footpath represented the easiest form of access for residents, particularly as there was a question as to whether the local bus service would continue to run. He was not convinced that the proposed route along the north of the railway line would be well maintained as Hollingbourne had experienced difficulties in getting South East and Network Rail to replace lights and cut hedges.

(27) Mr Garton continued by saying that it was very unlikely that there would be an accident. A maximum of 4 trains ran every hour, two of which stopped at the station. He considered that the suicide argument advanced by Network Rail was fallacious because anyone who did wish to kill themselves would be more likely to do so by jumping off the railway bridge than by standing at the crossing.

(28) Mr Garton then addressed the question of convenience. He said that his 80 year old mother would be unable to climb the stairs and use the bridge, but that she would be able to walk along the muddy path to the crossing.

(29) Mr Garton concluded his remarks by saying that he believed that Network Rail's Health and Safety concerns were unrealistically high and that people should be trusted to use their common sense.

(30) Mr Toby Broyad introduced himself as Network Rail's Level Crossing Manager. He said that people often asked whether every single foot crossing was unsafe. The answer to this question was that they were indeed unsafe. There were three crossings on the Ashford to Maidstone Line. Network Rail had been able to improve the crossings at Lenham and Acton to the point where they now met its safety standards. These improvements would not, however, be sufficient at Hollingbourne.

(31) Mr Broyad went on to say that the Office of Road and Rail (the safety regulator for Britain's railways) wanted Network Rail to completely negate the risks at crossings posed by the human factor. This included an instruction that whistles could not be used as the first form of protection.

(32) Mr Broyad noted that crossing was not on a busy line. This, however, was a factor which increased the danger. The vast majority of the recent 4 fatalities and 306 near misses nationally had occurred at crossings such as this because people became complacent. At Ham Street for example, children had been

filmed walking across the line behind one train whilst another one was approaching from the opposite direction. There had also been instances where people had walked in front of trains whilst chatting on their mobiles or fooling around. There had been other instances of casual misuse such as people scraping their boots on the tracks whilst crossing or wearing headphones and listening to music whilst walking across.

(33) Mr Broyad then said that sighting at the crossing was limited to between 2 and 3 seconds when the train was travelling at 80 mph. For vulnerable people, the time taken to cross the line had to be assessed at 12 seconds. The Office or Road and Rail did not allow whistle boards to be placed any further than 400m from the crossing.

(34) Mr Broyad said that another risk arose when slow trains were sufficiently close to the crossing for the red light to go on. The risk was that if a train was in the station, people would assume that the red light was on because of it. It could, however, be that another train was approaching from the other direction, leading to potentially fatal consequences.

(35) Mr Broyad said that the footbridge was only 95 metres from the crossing and some 200 metres from the nearest houses. It would therefore not be an inconvenience to ask people to walk to it. For vulnerable users, this would represent an improvement as they were currently struggling to walk the southern route to the crossing.

(36) Mr Broyad concluded his remarks by saying that owing to the difficulties posed by the limited sighting of 2 to 3 seconds and the speed of the trains, as well as the false sense of security arising from the limited amount of rail traffic on the line, the only safe option was to divert the footpath.

(37) Ms Nicola Mee (Network Rail) explained that Network Rail leased Hollingbourne Station to Southeast Rail. Whilst it had a policy of responding to complaints and clearing its own land within 28 days, it had no jurisdiction over land held by Southeast Rail. This also applied to questions of accessibility such as the installation of lifts.

(38) Mr Broyad replied to a question from Mr Ozog by saying that if the decision were taken to maintain the crossing, Network Rail would need to carry out a much wider census in the area. If it was discovered that there were vulnerable people who would be at risk, it was possible that Network would apply for emergency closure of the crossing.

(39) Ms Mee replied to a question from Mr Ozog by saying that the proposed new route would be made safe and accessible by laying a surface on top of a stone base. Long wide steps would also be introduced.

(40) Mrs Prendergast (Local Member) said that she had found the discussion very useful. She was not fully convinced by the Health and Safety argument due to the absence of recorded incidents at the crossing. She was concerned that the diversion would be less convenient and accessible for vulnerable users. She

asked whether it would be possible for the alternative route to be created without extinguishing the part of the route leading to the crossing.

(41) Ms Mee replied that this would not be possible as funding was only available for Network Rail to make improvements if it could prove that the risk to human life was being reduced.

(42) In the ensuing discussion of the application, the Panel unanimously agreed with Network Rail's view that it was not practicable to make the existing crossing safe for the public. It concluded that it was in the interests of the safety of users or likely users of the at grade crossing to divert the public path.

(43) RESOLVED that the applicants be informed that the proposed diversion of Footpath KH183 from the at grade crossing to the existing stepped footbridge at Hollingbourne Station has been agreed as it is not practicable to make the existing crossing safe for the public. It is therefore in the interests of the safety of users or likely users of the at grade crossing to divert the public path.