

# Application Form

for Diversion or Extinguishment  
of a Public Right of Way



PROW & ACCESS SERVICE

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## Highways Act 1980

### Section 118A or 119A as amended by the Transport and Works Act 1992

**To be used in conjunction with Network Rail's – Crossing Closure Application Form.**

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**For office use only:**

Path number.....

Parish.....

Schedule reference.....

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**Note: Please read Guidance Notes to help you complete this application**

**A. APPLICANT'S DETAILS**

1. Full Name...Damian Hajnus.....

2. Address...Network Rail Legal Services, 1 Puddle Dock, London, EC4V 3DS  
.....  
.....

3. Telephone number: ..... (mobile) 07720512712...

4. Email address: damian.hajnus@networkrail.co.uk.....

5. *Corporate customers only -*

Full company name (incl. PLC or Ltd) [Network Rail Infrastructure Ltd](#)

Purchase Order number:.....

Accounts department email address to which invoice should be sent:

.....

6. Do you intend to be represented by a professional agent? Yes  No

Name.....N/A.....

Address.....N/A.....  
.....

Email address:.....N/A.....

Telephone number .....N/A.....

Do you wish all future correspondence to be sent to: Self  Agent

**B. LAND OWNERSHIP AND OTHER INTERESTS**

1. Are you the owner of all the land affected by your proposal?

Yes  No

*Please provide copies of the relevant Land Registry title documents with your application.*

If No, please provide the name and address of the other affected landowner(s) below and attach his/her written consent to this application.

N/A

2. Are there any private rights affecting the existing or proposed routes?

Yes  No

If Yes, please provide details below including exactly where these rights exist.

N/A

3. Are there any other occupiers of the land affected by your proposal (e.g. any tenants)?

Yes  No

If Yes, please provide the name(s) and address(es) below.

N/A

**C. EXISTING ROUTE**

1. Path Number.....ZR681 [Teynham West level crossing (the Crossing)]

2. Parish.....Teynham.....

3. Is the Right of Way a: Footpath  Bridleway  Byway  Restricted Byway

4. Is the existing definitive route of this path open and unobstructed?

Yes  No  Partially

If obstructed, please provide details of how, where and over what period of time, and indicate the location of the obstruction on the plan accompanying this application.

N/A

**D. YOUR PROPOSAL**

1. What are you proposing?

Diversion  Extinguishment

*Please provide a 1:2500 scale plan indicating the extent of your landownership, the affected section of path and the proposed new route (where applicable) and the location of any existing and proposed stiles, gates or bridges.*

Plan A – Shows the diversion path (dashed black line), section of ZR681 to be extinguished (black solid line). Network Rail land ownership coloured bright green.

Plan B – Shows the footpath Proposed General Arrangement

2. What are the reasons for your proposal?

*Please provide as many details as possible as this will assist your application.*

### **Background**

Network Rail is an arm's length public body mandated to run the railway infrastructure in Great Britain. It operates subject to a strict statutory and regulatory regime. Some of its core duties are set out in its Operating Licence conditions, which critically compel it to run a 'safe and efficient' railway network.

In achieving this overarching aim, Network Rail is expected to, on one hand, identify and manage risks to its network, staff and members of public alike; on the other, to enhance the network where possible, thus ensuring that it operates at or as near to capacity as can be achieved.

Network Rail's regulator, the Office of Rail and Road, considers level crossings as the sole biggest source of catastrophic risk and advises Network Rail that the most appropriate means of dealing with such risk is, in line with the Health and Safety Executive's hierarchy of risk controls, its complete elimination.

In the context of level crossings, Network Rail's duty in respect of the risk is not an absolute one but one qualified by reasonable practicability. In consequence, Network Rail's threshold for risk level is As Low As Reasonably Practicable (ALARP) which means that the central objective of removing risks from the railway is further refined by factors pertaining to *reasonable practicability* i.e. objective constructability in both physical and, say, planning terms; commercial viability of a proposed solution, and, fundamentally; whether a proposed option offers value for money. This is in line with rail industry guidance contained in the Rail Safety and Standards Board (RSSB) document 'Taking Safe Decisions'.

This last factor underpins the options evaluation and selection process as it assesses, through the lens of Network Rail's obligations to the public purse, whether the level of investment proposed can be justified by the degree of elimination or reduction of risk it offers.

### **Risk Assessment Model**

Network Rail uses a comprehensive and extensive risk management system for all level crossings which includes two components:

#### 1) Quantitative Assessment

A mathematical model called All Level Crossings Risk Model (ALCRM) allocates a relative risk score to each crossing; this is comprised of two elements:

- Individual risk, expressed by a letter on a scale of A to M where A represents the highest individual risk, and;

- Collective risk, expressed by a number on a scale of 1 to 13 where 1 represents the highest collective risk.

## 2) Qualitative Assessment

A Narrative Risk Assessment is complemented by the data fed into ALCRM by the Level Crossing Manager. It contains an assessment of the risk observed at a crossing, including but not limited to: line speed and train frequency, frequency and type of public use and misuse, sighting distances, environmental factors relevant to safety.

### Teynham West level crossing

The Crossing is situated on the Victoria to Ramsgate (VIR) line at 47miles and 65chains. Teynham is the nearest station. It is situated just west of Teynham station, it is under a mile away from Teynham centre and 4 miles from Sittingbourne.

The majority of the housing and local amenities are south of the Crossing, including Teynham Village Hall and Teynham Parochial CE Primary School. Most of the land north of the Crossing is rural or agricultural.

### Teynham West LC risk

The Crossing was expertly assessed in accordance with the model above as a **B2** thus representing a high risk of accident. It is currently ranked as the 10<sup>th</sup> highest risk level crossing of any type within the Kent route (out of a total of 339 crossings). For footpath crossings alone the Crossing is ranked as the 2<sup>nd</sup> highest risk footpath crossing out of a total of 172 footpath crossings).

The risk assessment identified the following key risk drivers:

#### 1. Frequent trains;

There is an exceptionally high number of 183 trains per day travelling through the Crossing. 53 of these trains stop at Teynham station. This does not account for any ad hoc train movements.

Although trains are not timetabled to pass each other at the Crossing, incidents, disruptions, or unscheduled running can lead to trains passing the Crossing within 20 seconds of each other.

‘Second train coming’ phenomenon is a well-established source of serious accidents. Where trains pass each other in the vicinity of a crossing, this can lead to misjudgement, sometimes with tragic results. This is especially pertinent on busy, mainline railway lines such as the one on which the Crossing is situated.

The line speed is 90mph for trains in the Sittingbourne direction, and 75mph for trains in the Faversham direction. However, there is a temporary speed restriction of 80mph for trains running towards Sittingbourne to give users which Network Rail characterises as ‘vulnerable’ [more on

these at 3 below] sufficient time to cross<sup>1</sup>. The line speed and number of trains could increase in the future in line with government aspirations to increase passenger services on the railway. This is seems particularly likely when seen against the significant number of housing developments currently proposed in this area.

The braking distance for a train travelling at 75mph is 730 metres. This does not factor in the individual reaction time of the driver. There is a risk, based on comparable locations, that pedestrians will misjudge the speed of an approaching train and assess that they have more time to cross before the train reaches the Crossing than is in fact available to cross safely.

## 2. High number of users as recorded in the census taken in 2019;

A full 9-day camera census was commissioned by Network Rail in 2019. The census revealed that on average there are 120 pedestrians per day who use the Crossing. Cyclists, dog walkers, and children were recorded as frequent users of the Crossing. 14 incidents were recorded during the 9-day census.

There are also housing developments within Teynham that would very likely increase the level of use at this Crossing and consequently – risk.

## 3. Vulnerable Users

For the purposes of proper assessment of risk, Network Rail categorises certain user groups as ‘vulnerable’. This is a broad catalogue of those whose perception and/or ability to act on risks is or is likely to be affected. Typical categories of Vulnerable Users include those with mobility issues (i.e. elderly, infirm or disabled, also encumbered i.e. carrying items); those whose ability to perceive risk (e.g. to hear and see an approaching train) is limited. This also extends to children and youth, whose appreciation and tolerance for risk is observably greater than that of adults, or to those whose attention is focused on other-than-train aspects of their traverse – this pertains to, say, mothers with prams, those using mobile phones/devices or dog walkers.

In comparison to the typical user, a vulnerable user is one who is likely to take an extended time to traverse the crossing due to disability or distraction and/or might be at greater risk of harm due to their perception of risk and will require additional time to cross safely. A typical user requires a minimum of 12.7 seconds to cross safely (length of the Crossing x 1.2 m/s).

For vulnerable users, Network Rail applies 50% to the traverse time and an additional second for the step up to the Crossing. Therefore, a vulnerable user is expected to take at least 20.5 seconds to safely traverse the Crossing.

At the Crossing, there is a high-proportion of users who are classed as vulnerable. During the 9-day census in September 2019 there were 50 children, 37 elderly adults, 19 pushchairs, 65 cyclists

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<sup>1</sup> A detailed 9-day census identified a high proportion of vulnerable users necessitating an increase of 50% to the required time to cross safely. Since the Crossing has whistle boards, these could not be properly positioned [at the maximum distance of 400m from the Crossing] to give enough warning time for vulnerable users to cross safely. In consequence, exceptionally, a TSR (speed restriction) was imposed to ensure efficacy of whistle boards. This causes a 55.34-minute delay per day and creates liability for NR to compensate train operators

and 358 dog walkers recorded as users at the Crossing. Furthermore, during an informal drop-in session with residents Network Rail learned that children (accompanied by adults) use the Crossing to access Creed Outdoor Learning centre, which is situated north of the Crossing.

The census report noted several hazardous behaviours by vulnerable users, this included children sitting on the crossing deck, as well as walking on the trespass guards, people using their mobile phone whilst traversing the crossing and groups of children standing on the crossing. This was captured in CCTV footage.

#### 4. User Behaviour

The Crossing is a site of near miss events, there have been at least 14 recorded safety incidents at the Crossing since 2017. At least 2 of these incidents are classified as near misses. A high proportion of these incidents involve vulnerable users such as children and elderly pedestrians.

More recent events include near misses on 15 February and 04 April 2022, combined with trespass and vandalism events on 22 February 2022.

Together with significantly high number of users and the regular occurrence of misuse incidents at the Crossing. The misuse incidents typically involve users who are classed as vulnerable.

The last risk assessment for this Crossing was triggered by a near miss in August 2020.

Other behaviour-related safety risk at this Crossing include:

- a. A group of pedestrians may follow one another onto the Crossing without looking out for oncoming trains themselves, especially if they are distracted e.g. chatting;
- b. A pedestrian may assume that a train will slow down to stop at Teynham Station when it may actually be a non-stopping train for this station. The majority of trains on the VIR through Teynham do not stop at Teynham Station. False perception of the *actual* speed of approaching train is a regular phenomenon and a recognised source of risk;
- c. Users with visual or hearing impairments are likely find it difficult to use the Crossing safely as it relies on users being able to see and hear approaching trains;
- d. A user may misjudge the speed of an oncoming train and believe they have sufficient time to cross when that is not the case;
- e. Users may trip, fall, or collapse whilst traversing the Crossing, the relative ability to recover oneself by a Vulnerable User is further limited when compared to an able bodied user;
- f. Users with dogs can become distracted and dogs on a lead can impact on user's movement either slowing them down or dragging them forward. In addition, dogs not on a lead could possibly run onto the railway

#### 5. Limited sighting distance/proximity of the station

Towards Faversham, the minimum sighting distance required to cross safely at this Crossing is either 499 metres or 415 metres depending on the side of the Crossing from which the pedestrian is travelling.

The maximum measured sighting distance towards Faversham is 464 metres and is only achievable due to the temporary speed restriction that is currently in place. Absent the TSR, the measured sighting distance would be shorter still.

On busy lines with multiple tracks, or where trains pass each other at close proximity to level crossings, there is a significant risk of a passing train obscuring visibility of an approaching train on the opposite line, which is believed to have been a contributory factor at a fatal accident earlier this year at Lady Howard footpath crossing close to Epsom. This risk is compounded at crossings close to stations because stationary trains can block visibility for extended periods of time, and people rushing for trains might be less vigilant for their safety.

Due to the close proximity to Teynham station, trains stopped in the platforms can, and often do, completely obscure any trains travelling on the opposite line. When stood on the downside with a train stopped in platform 2, users are unable to see trains travelling on the up line.

This translates into a significant risk to a pedestrian wishing to cross; having waited for the first train to pass, a member of public can step out into the path of the second train which they have not been able to see or hear as it has been obscured by the first train. This, already significant risk is even greater when users are rushing to get to the station, which is far from an uncommon phenomenon generally, as well as at Teynham specifically.

Sighting from the Crossing can also be further obscured by commuters waiting on the platforms, which can also be a source of distraction to anyone using the Crossing.

Other known obstructions are station furniture such as platform ends and a railway building on the north side of the railway.

There are whistle boards at the Crossing (aimed to compensate for sighting deficiencies) which can however only mitigate the risk to a very limited extent. The incidents of misuse and near misses demonstrate that the whistle boards do not properly mitigate, still less prevent, against the safety risks at this Crossing.

## **Options considered**

### Diversion via a footbridge

It has been considered and rejected on the basis of failing the cost benefit analysis, prohibitive cost (min. £1.2m for a stepped structure and c£2.5m for a ramped one) and objective constructability and planning issues – availability of land or proximity to neighbouring properties with consequential overlooking and in keeping with its surrounds issues.

### Miniature Stop Lights

Network Rail has two main options of Miniature Stop Lights (Red/Green) lights available to them:

1. Overlay Miniature stop lights (OMSL)(c£200k)

This option gives users a warning of a train approaching by displaying a red and green light as well as audible warning at the crossing. The Overlay systems are designed for



plain line railways, where there are no stop signals, strike ins and stations. As such, due to the complexity of the signalling in the area and the proximity of the station, this option is not feasible.

## 2. Integrated Miniature stop lights (MSL) (c£800k)

As with Overlay MSL, this option gives users at the crossing a warning of train approaching by displaying a red and green light with audible warning. Due to the complexity of the signalling in the area and the close proximity of the station, an overlay system is not feasible and so MSL's would have to be fully integrated into the signalling system. This type of standalone project will incur all overheads associated with complex and in-dept altering of the signalling system, as well as ongoing operational costs.

Installing MSL's (red/green lights) at this location wouldn't sufficiently mitigate, let alone completely eliminate, the risks and does not mitigate against user behaviours commonly seen at Teynham West.

### Extinguishment

Whilst the most financially attractive option, this would deprive members of public of what is a popular local route and would be unlikely to attract the support of the order making authority, sufficient to make an order.

### Options not considered

#### Reduction of line speed

Network Rail's core regulatory obligation is to ensure, insofar as reasonably achievable, that the railway is safe for passengers, staff and members of public alike whilst ensuring that the network is maintained to a level where it can operate at maximum capacity.

This central duty clearly translates into an obligation to run a network which allows for as many train movements on any part of the network, on a tight timetable, at or as near as possible to line speed.

Line speed in this context means that the railway infrastructure at a given section of a given railway line is capable of accommodating safe train movements at that line speed. Secondly, in light of Network Rail's strict duty to run an *efficient* railway network, line speed is no mere speed restriction but rather an aspiration which is one of the key factors indicating the state of maximum efficiency/capacity of a railway line.

Where Network Rail's obligation to manage and eliminate risks is concerned, especially in relation to level crossings, there is a range of risk mitigation and elimination measures available to Network Rail, from simple audible warnings i.e. whistle boards on their own or in a combination with Secondary Audible Warning Device (already deployed at the Crossing and not effective) through warning lights (see above) to complete closure. Having developed, over the

years of observation and assessment, a comprehensive risk profile of the Crossing, Network Rail's expert view (as outlined in both the NRA and this application) is that mitigation measures, or a combination thereof, are unlikely to be effective and some of the closure options are prohibitively expensive and/or challenging to build.

Against this backdrop, reduction of speed of trains does not feature as a viable (or appropriate) mitigation measure and there is no reliable data to support a claim that reduction of speed of trains can achieve risk mitigation<sup>2</sup>.

At the Crossing there is a temporary speed restriction of 80mph on the up line which was not deployed as (or intended, nor could it be) a proper risk mitigation measure but rather an emergency and strictly temporary, short-term measure intended to bring the Crossing within the minimum prescribed safety compliance. It was introduced as a strictly reactive measure, following the 2019 census which revealed a concerningly high number of users which Network Rail characterises as 'vulnerable'<sup>3</sup>, pending development and implementation of the permanent and effective risk mitigation measure.

Further, in the expert view of this crossing's risk assessor, even if reducing the train speed further was available to Network Rail, it is not an appropriate, still less effective, measure to counteract the risk and, especially, the user behaviour observed at the Crossing. It would therefore not reduce the risk at the Crossing to an ALARP level and have no impact on the risk of the Crossing.

### Consultation carried out

Network Rail appreciates that its proposals, especially to close level crossings, can have an impact (albeit insignificant, if any, in the present) on our neighbours and members of public using the public paths network alike.

This is why Network Rail has consulted comprehensively at an early, pre-application stage, including Kent County Council, and held two public meetings in Teynham where both the proposed diversion and other options considered were presented and discussed at length.

The proposed diversion has also been discussed with key prescribed organisations such as BHS, OSS or Ramblers Association.

It is worth underscoring that public consultation for validity requires that the applicant consults on what it actually proposes to carry out. In this light the options set out here were put to consultees in the interests of completeness and transparency while the focus of the consultation was, properly, the subject matter of this application.

During both public events organised in Teynham there was a clear and pronounce sentiment against closure with some voices in favour.

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<sup>2</sup> *the only* piece apparently challenging this observation is Order Decision ROW/3253077 (Bailey Lane LC) but Inspector's observations are made, notably, absent *any* evidential basis (whether in the body of evidence before the Inspector or referred to in the OD) and lack specificity.

<sup>3</sup> Vide e.g. para 2.1 of NRA for more detail

The main material points raised by those present were:

1. Diverted route would be fundamentally safer than the current crossing;
2. Diverted route would be uninterrupted by very frequent train movements;
3. Diverted route could be less safe as it is hidden behind the platform – in response: the new route would follow a straight line with no hidden corners, will be located in a public space between residential buildings and station platform and lit;
4. Potential for (more) antisocial behaviour encouraged by the diversion route, this was of concern especially/solely to the stable owner. In response: Network Rail is open to deploying at its expense reasonable mitigation measures to ensure privacy and to prevent trespass

## Conclusion

Closure of the Crossing would eliminate the abovementioned risks by diverting pedestrians away from the railway line. There will be fencing at the site of the Crossing in order to prevent trespass and any signage required by the Council can be provided.

3. What is the proposed width of the new route (where applicable)? **2 metres**

*A minimum of 2 metres should be provided for footpaths, 3 metres for bridleways and 4 metres for restricted byways. If the path is to be fenced, an additional 0.5 metres will be required.*

*Where the Definitive Statement records a width for the existing path then it is that width which must be provided for the new route. However, Kent County Council may specify a lesser or greater width where it considers it expedient to do so.*

## **E. WORKS**

1. Please indicate on the plan and detail below any works that may be required to bring the new route into a fit condition for public use (eg clearance of trees, undergrowth, demolition of buildings, making up ground, drainage, surfacing, fencing, steps, ramps).

*Please read in concert with attachments Plan A and Plan B*

### Works along the blue dashed line

Network Rail will carry out deep vegetation clearance from the area of the proposed path along the rear of platform 2, between the platform wall/fence and the existing boundary fence. Network Rail will clear all arisings from site and apply Herbicide treatment to complete the area.

Network Rail will supply and construct a new 2000mm wide path between the proposed access adjacent to the existing Downside approach to Teynham West Footpath Crossing and to the start of the existing garages – approximately 187 linear metres. Path will be constructed of 150mm thick compacted MOT Type 1 – laid on geotextile membrane, with a granno dressing to finish. All edgings to be C24 Treated Timber edgings laid to correct line and level. This footpath will be fenced on the platform side with a 1.8m high chainlink fence. Re-positioning of railway assets will be undertaken where required to facilitate the fence/footpath.

Works between points A and C

Network Rail will carry out remedial works to support the existing platform fence towards the country end of platform 2 by installing new I Beams to allow the removal of existing bracing supporting the existing fence. Network Rail will supply and construct new fencing from the start of the neighbours’ garages to the station entrance (end of path) – approximately 60 linear metres. Within the country end area of the mature tree area, clear the general area to allow a footpath to be constructed. Three trees with multi stems have been identified for pollarding to create the footpath.

*Any works carried out in connection with the Orders will have to meet the County Council’s specifications and standards. No works should be carried out until the Order has been confirmed. Works must then be completed within 28 days of the Order being confirmed, or within a suitable period agreed with the Order Making Authority and prescribed in the Order.*

**F. LOCAL CONSULTATIONS**

- 1. Consultees will require access to inspect the proposed route. Do they need to make contact with anyone before doing so?

Yes  No

If yes, please give details below:

Name...Gemma Kent.....

Address.....  
.....  
.....

Telephone number ..... 07801902008 .....

*Please note that this information will be included on the consultation letter and will therefore be available to the public.*

**G. YOUR APPLICATION**

- 1. I apply to change the Public Rights of Way network as indicated in this application form and as shown on the attached plan. I undertake to meet the County Council's full costs and all advertising costs in promoting the Order whether or not it is successful. Furthermore, if I withdraw my application at any stage, I also undertake to meet the County Council's full administrative costs and any advertising costs up to that point. The County Council will use its best endeavours within the statutory framework to bring your proposal to an early conclusion although it cannot guarantee the eventual outcome.

2. (a) I undertake to meet the County Council's full costs for carrying out the works necessary to bring the new path into a fit condition for public use.  
or  
(b) I undertake to carry out the necessary works myself or by employing a contractor to bring the new path into a fit condition for public use to the County Council's satisfaction. I also undertake to meet the County Council's full costs for the delivery of furniture, installing any necessary fingerposts and/or waymarking the new path.

Please be advised that if the necessary works are not completed to the required standard within 3 months of the Order being confirmed (unless agreed otherwise) then the County Council reserves the right to undertake the works and recharge you the full costs for carrying out those works.

3. I undertake the responsibility of cooperating in a timely manner with the County Council and assisting in the process where requested by the case officer. The County Council reserves the right to cease to process an application where the applicant fails to meet reasonable response deadlines set by the Case Officer (and an invoice will be raised for works undertaken to date).
4. I undertake to indemnify the County Council against claims in accordance with relevant Provisions of the Town and Country Planning Act 1990 and the Highways Act 1980 in respect of compensation for depreciation in value of an interest in land or for disturbance in enjoyment of land consequent upon the making of an Order;
5. I undertake to indemnify the County Council against any expenses incurred by the Council in connection with the making and confirmation/certification of any Order that may be made in respect of this application.
6. I certify that I have sought and obtained permission from all other landowners affected by this proposal (where applicable) as detailed in section A.
7. I note that this application cannot be treated as confidential and a copy of this form and any accompanying documents may come into the public domain at any time. A copy of this form and any accompanying documents may also be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.
8. I give consent for the personal details that I have provided in this application form to be stored, as part of the original application form, on the relevant footpath file indefinitely.

**Signature of applicant and all registered landowners**

**Signature** Damian Hajnus.....

**Date** 06 December 2022

**NAME IN CAPITAL LETTERS PLEASE** Network Rail Infrastructure Limited

**Please ensure that the application form has been completed in full and is accompanied by a plan of the proposal at a scale of at least 1:2500, preferably based upon an Ordnance Survey Map extract providing you comply with their Copyright conditions. The plan will need to show the entire length of the existing path(s) concerned in a solid line and the proposed new route(s) in bold dashed lines, together with the location of any stiles, gates, bridges, culverts or other works necessary to bring the new route into effect. The extent of landownership(s) will also need to be shown on the plan and proof of ownership provided.**