

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the The Hope Room, Otford Village Memorial Hall, 8 High Street, Otford TN14 5PQ on Wednesday, 1 March 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr L Burgess, Mr T A Maddison and Mr J N Wedgbury (Substitute for Mr M J Harrison)

IN ATTENDANCE: Mr G Rusling (Public Rights of Way & Access Service Manager), Ms M McLauchlan (Definition Officer) and Mr A Tait (Democratic Services Officer)

#### UNRESTRICTED ITEMS

1. **Application to divert Public Footpath SR49 from the at grade Foot Crossing to a stepped bridge at Otford.**  
(Item 3)

(1) The Panel Members visited the site of the application prior to the meeting. They inspected the crossing point and observed the visibility lines along the railway from both sides of the track. The location of the proposed step bridge was also pointed out to them. Members then walked the route through the station car park that was intended to replace the existing footpath. The visit was attended by Nicola Mee and Gemma Kent from Network Rail, Philip Clucas and John Edwards-Winsor (Otford PC) and Barry Davies.

(2) The Definition Officer introduced the application by saying that it 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 a stepped bridge, which had already been granted planning permission.

(3) The Definition Officer then set out her findings in respect of the criteria for proposed diversions given in Section 119A of the Highways Act 1980. The first of these was whether it was expedient in the interests of the safety of users or likely users of the crossing. She said that a number of risk assessments had been undertaken by Network Rail, the most recent in October 2015. This latest risk assessment had increased the risk score from a rating of C3 (high risk) to C2 (higher risk) due to usage figures and an increase in numbers of vulnerable users. This was despite the temporary speed restriction in force limiting trains to 45 mph rather than the usual 60 mph. This temporary restriction had been imposed due to the insufficient sighting available at the level crossing. Whistle boards had previously been installed in order to mitigate the insufficient sighting at the crossing. These had been removed following a Noise Abatement Notice.

(4) The Definition Officer said that this particular crossing was ranked by Network Rail as 29th of 561 level crossings on the South East Route in terms of danger. In respect of crossings which catered for public footpaths, it ranked 1st of 278, putting it within the top 1% in the country based on Network Rail's assessment of risk. Network Rail's main concerns at this crossing were insufficient sighting, the high level of use, and evidence of misuse coupled with the high level of vulnerable users, particularly unaccompanied children and the elderly. Network Rail had provided an incident log, but these incidents were not weighted. Network Rail considered that its proposed solution of a footbridge with steps would remove the risk of serious injury to users and allow uninterrupted use.

(5) The Definition Officer then said that Network Rail had calculated that 13.5 seconds were required for vulnerable users to cross a level crossing. The traverse time was calculated based on the length of the crossing between decision points. For this crossing, this had been calculated by estimating that an average person would take 9 seconds to cross. Due to the number of vulnerable users that used the crossing an additional 50% had been added to the traverse time.

(6) The Definition Officer continued by saying that it was difficult to fully assess the safety case Network Rail had put forward. Witness statements relating to the logged incidents had therefore been requested by the County Council under the Freedom of Information Act in order to ascertain which incidents were relevant and to establish the criteria used for recording a 'near miss'. The incident that had been deemed a suicide, for example, could not be seen as relevant in this case; nor could some of the other incidents logged -such as "contractor working unsafely." Network Rail had confirmed that the only criteria for reporting a 'near miss' was if the driver considered it to be one. Network Rail had only recently responded that it did not hold the information requested. It was held instead by the British Transport Police, so a further FOI request would need to be made to them.

(7) The Definition Officer summed up her findings on this criterion by saying that there had evidently been some incidents on this level crossing, particularly in relation to misuse, although it was too difficult to accurately assess the near misses. There was an inherent risk with any level crossing, but as one of the respondents had pointed out, there was no risk when no train was present. Network Rail considered that the stepped bridge would be a safer option for the public, which would also enable uninterrupted use of the crossing. There was also an argument that a stepped bridge would be more dangerous for at least one member of the public who used the crossing regularly. However, a bridge would be much safer for those who were blind or partially-sighted, for example.

(8) The Definition Officer concluded the case was very finely balanced. Taking into account the number of trains using the line, the ever increasing speeds of those trains and the number of incidents at this crossing, she considered that, on balance, it was expedient to divert the footpath in the interests of the safety of users or likely users of the crossing.

(9) The Definition Officer turned to matters that needed to be taken into account by the Panel; even though they were not listed in the Highways Act 1980 they were included in DEFRA Guidance (*DEFRA Rights of Way Circular 1/09 paragraph 5.51*). The first of these was whether it was expedient in the interests of the safety of users or likely users of the crossing. She said that the proposed route would run over a new stepped bridge which had been granted planning permission. This bridge would have 28 steps on its eastern side with a mid way level and 34 steps on its western side with a mid-way level. The existing route had a stile and a series of approximately 6 wide-spaced steps leading to the east side of the level crossing and a stile on the west side. Network Rail had been asked if the stiles could be removed to make access easier but that they had stated that this would increase the risk to the crossing as more vulnerable users would be able to use it, further increasing its risk. This was unacceptable to Network Rail. Although not easily negotiable, it was known that some people with pushchairs used this route and would be unlikely to be able to use the stepped bridge. One local resident currently used the level crossing without issue, but would find the bridge very inconvenient and dangerous to the point where he might not be able to use it. Network Rail had stated in response that it was unable to assess the needs of individuals. Wheelchair users could not use the existing route and would not be able to use the stepped bridge either. People who were visually impaired or blind would find the bridge more convenient and easier to use. It was therefore evident that the stepped bridge would inconvenience some users of the crossing.

(10) Another criterion was the safety of the diversion, particularly where it passed along or across a vehicular highway. She said that the safety of the new route over the stepped bridge had been queried. Network Rail had been asked to provide accident statistics on its current stepped bridges (in relation to falls, etc.) so that a comparison of risk could be made. The accident statistics were set out in the papers as recorded via Network Rail's National Helpline and entered into its Safety Management Information System. It was recognised that there might have been many more incidents that had never been reported to Network Rail. There was, therefore, a concern that the proposed new route running over the stepped bridge was not significantly safer than the level crossing.

(11) The Definition Officer's overall conclusion was that the case was very finely balanced. Network Rail had a safety case and the tests under section 119A of the Highways Act 1980 had been met. On the other hand, the proposed new route ran over a high stepped bridge, which included its own risks, and would exclude some members of the public who were currently able to access the existing route. She recommended that, on balance, an Order should be made. She added that because the balance was such a fine one, this was a case where the evidence both for and against the application lent itself to being tested at a Public Inquiry. She therefore also recommended that if objections were received and the Order was submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination, the County Council should take a neutral stance at a Public Inquiry.

(12) Mr Tom Housden said that he wished to speak about Network Rail's lack of focus on disability issues. He said that Network Rail had completely ignored

the disability issues he had raised with them in their earlier public consultation meeting. These had been general points rather than ones which had been specific to him. One of these had been the need to comply with the 2010 Equality Act as well as planning regulations when seeking to change the footpath crossing. They had not produced a disability strategy document for the footbridge crossing proposal, raising doubts about Network Rail's compliance with the Act. They had, for example, always proposed access to the bridge in by steps rather than a ramp which would be far more helpful to disabled people. The issues he had raised had been wrongly dismissed by Network Rail as the concerns of one person instead of being seen as relevant to the disabled community in general as he had always intended.

(13) Mr Housden went on to consider the impact of a bridge on the safety of the disabled. He said that there were two groups of disabled people who were affected. These were blind or partially sighted people and people with mobility problems. A bridge would reduce one set of problems for people with sight problems as they would no longer have to worry about their inability to see a train coming. The proposed bridge would, however, introduce a new set of risks. People with limited or no sight would have to deal with two sets of steps, which would be risky at the best of times. They would have especial difficulty seeing a safe route if there were obstructions on the bridge or when bad weather had increased the risk of slipping on wet or icy steps. He considered that, on balance, a footbridge would not improve safety for people who were blind or partially sighted.

(14) Mr Housden said that people with mobility problems would find that a bridge would definitely increase the level of risk in comparison to the present crossing as steps could be very difficult and dangerous for them. Crossing a stile was difficult enough, but climbing two flights of stairs would be even worse.

(15) Mr Housden referred to his own case as an example of a general problem. He said that when he came home from Sevenoaks on the train, he avoided using the footbridge on the platform because he felt unstable and did not want to risk using the bridge. He would go the long way round instead, along the footpath and across the stile as this was a far safer route for him. He then referred to a letter from another local resident who had informed him that a footbridge would be far more dangerous for her than the present crossing because of her condition. This letter indicated that there were many others with mobility problems who used the present crossing. He felt that it would be wrong to make changes that reduced their safety.

(16) Mr Housden went on to speak to his third point which was that convenience was a safety issue for the disabled. He said that if disabled people with mobility problems had to walk the long way round to cross the railway line, they would be exposed to additional risks of falling. They would also need to cross a busy main road where they had to cross the road-bridge across the tracks. He asked the Panel to bear in mind that shorter routes were generally safer routes for disabled people if footbridges could be avoided. He asked the Panel to not force disabled people to walk a long way round to avoid the proposed footbridge, and to keep the crossing as it was.

(17) Mr Barry Davies spoke against the proposal. He said that he had been an Environmental Health Enforcement Officer at a London Borough. He intended to consider whether the proposal was necessary in the interests of safety, whether it was practical to make the existing crossing safer and whether the proposal would be more convenient for those who used the existing route.

(18) Mr Davies said that Network Rail's Risk Assessments scoring system was based on incidents rather than accidents. There had been no accidents over the 150 years. Some of the incidents recorded (such as children throwing stones and a suicide) had no relevance to the matter at hand. If these were discounted, the number of incidents which indicated that the crossing was dangerous was relatively small.

(19) Mr Davies then said that Network Rail had dismissed the possibility of improving safety along the line itself by, for example, installing lighting or warning systems or reducing the speed of the trains. It maintained that the current 45 mph speed limit was safe and had more recently ruled a speed reduction out because of the delays that this would cause. In his view, this particular problem could be resolved by slightly amending the timetable.

(20) Mr Davies showed the Panel a photograph of a crossing at Edenbridge and said that this had achieved all the results that Network Rail was seeking from its proposal for Otford.

(21) Mr Davies said that the low level of risk presented by the crossing could be set against the figures published by the Health and Safety Executive which indicated that there had been some 100 fatalities over the previous year as a result of falls from staircases, as well as 100,000 injuries. Of the deaths that occurred in homes, some 25% were due to falls. This demonstrated that the effect of the proposal would be to replace the low risk posed by trains with another set of hazards. People could choose not to cross the track when a train was passing, but did not have the option of choice with a bridge.

(22) Mr Davies referred to the incident reported in page 70 of the papers where 8 of the 36 steps on the footbridge over the railway line at Hounslow had been found to be defective. He said that people had noticed defects in the bridge at Otford Station.

(23) Mr Davies concluded his remarks by saying that if people chose to avoid the bridge they would also need to cross the busy road once they had done so. This would include people with pushchairs. If Network Rail's calculations were to be applied to the roads, they would identify a greater hazard than the crossing. Logically, this would mean that a bridge should be built over every road.

(24) Mr Philip Clucas said that it was Network Rail's intention to close every crossing on its lines. Its justification for wishing to do so was based on conjecture and supposition. In this case, there had been no serious injury since 1862 despite an estimated 4 million crossings being made in the last 70 years.

(25) Mr Clucas said that observations carried out on the time taken to reach the crossing after first being seen for three trains approaching the crossing from

both directions had revealed that it had taken 14, 16 and 12 seconds from the west side and 12, 13 and 18 seconds from the east. These times were far longer than claimed by Network Rail.

(26) Mr Clucas continued by saying that there would be a natural accumulation of mud, leaves and snow on the stairs and asked who would be responsible for monitoring, clearing and gritting them (KCC Highways or Network Rail). The present foot crossing was convenient and widely used. Parents of young children would be most at risk, as would the elderly (whose numbers were increasing all the time). Once they had crossed the bridge, these people would be faced with an additional 0.64 mile detour through the station forecourt and car park.

(27) Mr Clucas then said that KCC had considered the crossing to be sufficiently safe that it had funded a walking bus which used the crossing. In his view, no fair assessment of the risk had been carried out. He urged the Panel to listen to the community.

(28) Mr John Edwards-Winsor (Otford PC) said that Network Rail had not listened to the public. They had wanted a controlled crossing, but Network Rail had claimed that it would be no safer than an unmanned one. One possible improvement to help parents would be if the steps had a separate lane resembling guttering. He asked who would be responsible for replacing the worn nosing on the steps. He concluded by saying that closing the crossing was not the solution as it was so widely used. Likewise, the erection of a bridge would not solve the problem.

(29) Mrs Nicola Mee said that Network has carried out a survey over a 9 day period which had counted 1554 movements over the crossing. Of these, 348 had been children, 149 of whom had been unaccompanied. There had been 8 crossings involving push chairs and prams.

(30) Mrs Mee then said that the footbridge would have step noses of contrasting colours, hand rails, and anti-slip surfacing. It would also be possible to incorporate a cycle gutter. This meant that the bridge would be constructed to modern day standards.

(31) Mrs Mee continued that according to Network Rail statistics, there had been 12 incidents at the crossing over the previous 5 years. The concern was that an accident at the crossing would be almost certainly far more significant than an accident involving steps on the bridge. The most significant cause of risk at this crossing was its proximity to Otford Station which operated a red/green warning light system. If people saw the red warning light, they could make the mistake of believing that the red light was simply indicating that the train had stopped at the station. They would potentially have insufficient time to react.

(32) Ms Gemma Kent (Network Rail) said the Office of Rail Regulation had instructed Network Rail to reduce risk by 25% in the UK. It was not, however, Network Rail's policy that every crossing needed to be closed.

(33) Ms Kent went on to say that there had been numerous incidents where people had ignored the red light at the Otford crossing. This was particularly

worrying as it was not uncommon for a non-stopping train to pass a stopping train at Otford Station. This was one of the reasons that Network Rail had given the crossing such a high risk score. She asked the Panel to note that people had crossed the line during that morning's site visit without looking and whilst wearing headphones. She then showed the Panel a photograph taken in West Sussex of children playing on an electrified railway line near a crossing.

(34) Mrs Mee said that there had been other incidents since the application had been made in 2014. These included some 8 young people playing "chicken" at the crossing in August 2016.

(35) Mrs Mee replied to a question from Mr Maddison by saying that the bridge would not be constructed if the Diversion Order was not confirmed. This was because Network Rail would be unable to access government funding for this particular scheme as the bridge's construction would not reduce the risk score.

(36) Members of the public made various additional comments. These included the view that there should be a continuous speed restriction of 45 mph and that the risk would be further reduced if it were reduced to 30 mph; that Network Rail had given people to understand during the public meeting that they would only build the bridge if the crossing was not closed; that there had been no incidents when Eurostar had used the line for a 10 year period; and that there was no evidence that children cross the line when the red light was on.

(37) The Network Rail representatives said that the Panel should note that two lighting columns would be set up to ensure safety over the bridge and that Network Rail had considered the separate merits of diverting each of the footpaths at crossings on a case by case basis.

(38) The Panel Members moved on to discuss the application. Mr Maddison said that he did not feel that the case of safety had been made on the basis of what he had read, seen and heard. He considered that the crossing could be made safer and that there were risks associated with the proposed step bridge. These included the possibility of young people dropping things on the line from the bridge as well as the significant points made by members of the public.

(39) Mr Burgess said that he considered that he could not support the officer's recommendation because the replacement of a well-used crossing by a step bridge was unnecessary. The approach should be one of considering the safety improvements that could be made to the crossing itself.

(40) Mr Wedgbury said that, although he understood Network Rail's position and intentions, they had not been able to produce a convincing safety case for diverting the footpath onto a bridge, which brought its own safety and inconvenience issues into play.

(41) Mr Manion said that the community had made its views clear. In his view the points they had made during the meeting demonstrated that they had a clear understanding of the risks involved in both the crossing and the proposed solution. This was a view that he shared.

- (42) On being put to the vote, the Panel agreed unanimously to refuse the Order.
- (43) RESOLVED that the application to make an Order under Section 119A of the Highways Act 1980 to divert part of Public Footpath SR49 at Otford be refused as, on the evidence before the Panel, the case of safety has not been made in the light of the objections received.