

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

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 23rd January 2018.

Recommendation: I recommend that the applicant be informed that an Order to divert public footpath KH183 from the 'at grade' foot crossing to the existing stepped footbridge at Hollingbourne Railway Station in the Borough of Maidstone, is declined.

Local Member: Ms Shellina Prendergast

Unrestricted item

Introduction and background

1. The County Council has received an application to divert part of public footpath KH183 at Hollingbourne. The application has 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.
2. The last risk assessment was carried out on 2nd June 2016 when the crossing scored a rating of C6 on Network Rail's All Level Crossing Risk Model, making it high risk.
The key risk drivers here are:
 - Insufficient sighting/warning time of approaching trains
 - Fast and frequent trains
 - Sun glare (although the crossing does not rely solely on sighting)
 - Crossing configuration
 - Proximity to Hollingbourne station
3. Although there are no recorded incidents of near misses or fatalities at this level crossing, Network Rail considers there is a likelihood of a serious incident occurring here due to the lack of visual warning of approaching trains, providing insufficient time for users to pass over the level crossing. The sighting cannot be improved and the proximity to Hollingbourne station reduces the options available to Network Rail to carry out works or install other mitigation measures. It is for these reasons Network Rail feels that the diversion to the adjacent station footbridge is the best option for the diversion of footpath KH183 and closure of the level crossing.
4. The length of path to be diverted is shown by solid black lines between points A-B on the plan at **Appendix A**.
The proposed new route is shown by bold black dashes between points A-C-D-E.

An extract from the Definitive Map can be found at **Appendix B** to show the path in context with the rest of the public rights of way network.

5. If this proposal is successful, it would make public footpaths KH183 and KH185, shown between points F-B and B-G on the plan at **Appendix A**, cul-de-sac paths (as point B at the level crossing will no longer exist). Footpaths KH185 and KH184, shown running between points E-F-G, would continue to provide a suitable alternative route. Therefore, if the Rail Crossing diversion proposal is successful, it is also proposed to extinguish these parts on the grounds that, those parts of footpaths KH183 and KH185 as described above will no longer be needed.
6. A copy of the application can be found at **Appendix C**.

Policy

7. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The main priorities in respect of Public Path Change Orders are:

Public Path Change Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order maybe processed sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
 - Where an application has been made to the County Council in its capacity as Planning Authority
 - Where the processing of an Order could save significant costs incurred in other Rights of Way functions
 - Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.
8. The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the Legal Tests section) for changing public rights of way must apply.
 - I. The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
 - II. The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use.
 - III. The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
 - IV. The definitive line should, where it is considered by the County Council to be reasonably practicable be open, clear and safe to use.

9. However, nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

Legal Tests – Rail Crossing Diversion Order

10. Legislation relating to the diversion of a public path is contained within Section 119A of The Highways Act 1980: The Procedure is in Schedule 6 of the same Act.

(i) 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.

(ii) 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.

Government Guidance

11. Rights of way circular (1/09) Guidance for local Authorities – also states:

Rail crossing diversion orders (section 119A of the 1980 Act) Para 5.51

“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.”

Consultations:-

12. Consultations have been carried out as required by the Act:-

County Member and Borough Councillors

13. County Member Ms Shellina Prendergast and Borough Councillor Patrik Garten were consulted. No response was received from Ms Prendergast. Councillor Garten objected to the proposal, stating there are no recorded incidents or near misses at the crossing. As Hollingbourne station is not suitable for the disabled, the proposal's advantages do not reasonably outweigh the consequential problems. Hollingbourne has a high proportion of elderly citizens who he considers would be affected.

Maidstone Borough Council

14. Maidstone Borough Council had no objection to the proposal.

Hollingbourne Parish Council

15. Hollingbourne Parish Council was consulted but did not respond directly. However, it did respond to Mid Kent Planning, requesting that the application be refused as the Parish Council was very concerned about the access given for people with limited mobility.

User Groups

16. The Open Spaces Society, the Ramblers and the British Horse Society were consulted. No responses were received.

West Kent Area Public Rights of Way Manager

17. The West Kent Area PROW Manager agreed with the proposal. He commented that he would be uneasy about replacing an at grade crossing with a stepped bridge in most circumstances, but felt that in this case there is no practical access to the site for less mobile users currently.

Statutory Undertakers

18. No objections were received from any Statutory Undertakers who responded to the consultation.

Kent Downs AONB Unit

19. The North Downs Way Trail Manager responded that he had no objections to the proposals in light of the safety issues outlined, but expressed concerns about reduced access for people with mobility issues.

Kent County Council Traffic Schemes (Highway Services)

20. No response was received from Kent Highway Services.

Local Residents

21. Sarah Baxter objected to the proposal for the following reasons:
 - The path is in regular use and part of the access from Hollingbourne to Broad Street.
 - The area is known for its walks and there are a number of regular walkers who visit the village and this access point. It is well known and very useful.
 - Many people use this crossing with dogs so if the footpath is accessed via the station this would not increase safety.
 - The mention of 'safety' as Network Rail's core reason is spurious and if this crossing is removed due to safety then every such crossing could be. The rail crossing is less hazardous than crossing the road in Hollingbourne.
22. Philip Smith 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 considered there was no reason to close it but did not respond further when it was clarified that the path would be diverted rather than just closed.
23. Philippe Niebergall did not object or agree with the proposal but asked why Network Rail wished to close the footpath as it is the gateway to a wonderful area of outstanding natural beauty. After clarifying to Mr Niebergall the reasons for the proposal he did not respond again.
24. Greg Sharpington objected to the closure of the crossing for the following reasons:
 - He, his friends and family use the crossing frequently throughout the year; it is the obvious walk between their house and that of his parents.
 - It is used to get to the station by numerous people in Broad Street, not to mention the hundreds of ramblers that utilise the crossing to and from the railway platform when planning their walks.
 - It is part of the village heritage and history and should certainly not be closed.
 - It is not a busy track.

After clarifying that the proposal was to divert and not just close the crossing, Mr Sharpington expressed relief that there would still be a crossing but felt it would not be the preference of villagers from Upper Hollingbourne, Broad Street and beyond and would not be in favour of it.

He is not aware of any incidents and considers the sight in both directions along the track is good.

He further commented that a bridge can be dangerous too, especially in winter, and that it would mean some people would not be able to use it, giving his mother as an example of someone who needs to use a stick and hates steps but who can walk for miles on flat terrain.
25. James Johnson broadly supported the proposal but expressed concerns that future maintenance of the path might become neglected.

26. Robert Edwards did not object but asked for Network Rail to subsequently remove the need for trains to sound their horns.

27. John Colley objected to the proposal for the following reasons:

- The proposed diversion section is impassable during the winter months between point E & F. The ground becomes waterlogged and then deeply pugged by the movements of cows between fields and impassable until it has dried out in late spring.
- The proposed diversion through Hollingbourne station will discourage use of footpaths KH185 and KH183 which emanate from points A & B. Hollingbourne station is an unstaffed and semi derelict remote station which suffers vandalism, thefts and damage in the car park and youths hanging around. The proposed diversion presents an increased threat to the personal safety of walkers, some of whom will find it too intimidating to use.
- The extinguishment is unnecessary because these sections do not cross Network Rail's property. KCC has 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.

28. Jerry Whitmarsh of Linton Parish Council objected to the proposal stating he has led walking groups over the crossing many times without incident, and as far as he is aware there have never been any incidents reported. He therefore felt it could not be that unsafe.

The Case - the proposed diversion of part of Public Footpath KH183 at Hollingbourne

30. In dealing with the application to divert a public right of way, consideration must be given to the following criteria of Section 119A of the Highways Act 1980: -

- a) Whether it is in the interests of the safety of users or likely users of at grade crossings;
- b) whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained;
- c) whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists a like right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it;
- d) whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.

31. To be taken into account but not listed as criteria under Section 119A of the Act but in Rights of Way Circular (1/09):

- a) Whether the right of way will be reasonably convenient to the public;
- b) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created;
- c) The effect that the diverted way will have on the rights of way network as a whole;
- d) The safety of the diversion, particularly where it passes along or across a vehicular highway.

32. Those criteria are considered individually and conclusions drawn below: -

- a) *Whether it is expedient in the interests of the safety of users or likely users of the crossing.*

The last risk assessment carried out by Network Rail was on 2nd June 2016 when the crossing scored a rating of C6 on Network Rail's All Level Crossing Risk Model, making it high risk.

The key risk drivers here are:

- Insufficient sighting/warning time of approaching trains
- Fast and frequent trains
- Sun glare (although the crossing does not rely solely on sighting)
- Crossing configuration
- Proximity to Hollingbourne station

Although there are no recorded incidents of near misses or fatalities at this level crossing, Network Rail considers there is a likelihood of a serious incident occurring here due to the lack of visual warning of approaching trains, providing insufficient time for users to pass over the level crossing. The sighting cannot be improved and the proximity to Hollingbourne station reduces the options available to Network Rail to carry out works or install other mitigation measures. It is for these reasons Network Rail feels that the diversion to the adjacent station footbridge is the best option for the diversion of footpath KH183 and closure of the level crossing.

Initially the County Council declined to accept this application, concluding 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.

The County Council was asked to reconsider accepting the application as the Level Crossing Manager was becoming increasingly concerned about the insufficient sighting. A site visit was undertaken and the decision made to accept the application, although it was considered very marginal.

At consultation a number of people 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 are considered to be insufficient and not compliant with Network Rail's criteria, those using the crossing felt the sight lines were adequate. One person commented that the rail crossing is less hazardous than crossing the road in Hollingbourne and it was also pointed out that bridges can be dangerous too.

The consultation responses, particularly from those people who frequently use the crossing, did nothing to persuade the County Council that the level crossing at Hollingbourne is so unsafe that it requires a closure.

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

Whistle boards are present on both approaches in order to mitigate the insufficient sighting at the crossing. Vegetation management has been undertaken, and is regularly required to maintain current sighting distances, but due to track curvature no further improvement could be made to available sighting. The proximity to Hollingbourne station reduces the options available to Network Rail to carry out works or install other mitigation measures. Network Rail has not identified any other works that could be undertaken to improve safety of the crossing.

If an Order is made and confirmed, the existing level crossing would be securely fenced off in order to prevent unauthorised access to the railway. Any signage required by the Council at the crossing (and any other points) would be provided.

c) whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists alike right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it.

The new route does not, strictly speaking, alter the point of termination of the path as it connects to other existing public rights of way. However the proposal would make the journey substantially longer in some circumstances.

d) whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.

Network Rail would maintain the structure of the bridge and future maintenance of the surface of the footpath where it would form part of the bridge.

Tests to be considered under Circular (1/09)

33. a) Whether the right of way will be reasonably convenient to the public.

It is proposed to re-route the footpath over the existing station footbridge. As a result, the length of the path increases significantly. No one who responded to the consultation commented on this matter which is an indication, therefore, that it was not an issue in itself. However, the bridge raised comments from many people. The main point that was 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 are steps on both sides of the level crossing and the fields through which the footpaths then pass are known to become extremely muddy in winter, Network Rail considers that the footpath can only be used by those who are able-bodied, and therefore 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 is no practical access to the site for some less mobile users at present, as was mentioned by the West Kent Area PROW Manager, the diversion onto the bridge would exclude some people from being able to use the footpath who are currently able. Wheel chair users, for example, cannot use the existing crossing, so the bridge would not change anything for them. However, someone who can walk a good distance on the flat using a stick, would not be able to use the stepped bridge.

b) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created.

The proposal would render two parts of footpaths KH183 and KH185 unnecessary as they currently converge at the south side of the level crossing. Footpath KH184 would serve exactly the same purpose. Therefore, if an Order were made to divert footpath KH183 from the level crossing, an Order would also be made (under section 118 of the Highways Act 1980) to extinguish those parts of footpaths KH183 and KH185 between points G-B-F on the plan at **Appendix A** on the basis that they would not be needed.

The land over which the proposed route will run is owned entirely by Network Rail and would not be adversely affected.

c) The effect that the diverted way will have on the rights of way network as a whole.

The diverted way will impact on the rights of way network in as much as it will increase the overall distance users will have to walk. This is not significant though and no one who responded to the consultation raised it as an issue. However, the bridge will exclude some walkers who can currently use the level crossing.

d) The safety of the diversion, particularly where it passes along or across a vehicular highway.

The new route is to 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 was also stated that stepped bridges themselves carry a danger especially in poor weather.

Further considerations

34. In addition to the tests set out in section 119A of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert a public right of way:
35. Under section 29 of the Highways Act 1980, the County Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna and geological and physiographical features. In this case, there is no adverse effect caused by the diversion of the path.
36. Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard “*so far as is consistent with the proper exercise of [its] functions, to the purpose of conserving biodiversity*”. In this case, there is no adverse effect caused by the diversion of the path.
37. Where the affected land forms part of an Area of Outstanding Natural Beauty (AONB), section 85 of the Countryside and Rights of Way Act 2000 requires that the County Council shall have regard to “*the purpose of conserving and enhancing the natural beauty*” of the AONB. In this case the land forms part of the Kent Downs AONB but the North Downs Way Trail Manager considered there would be no adverse effect as a result of the diversion.
38. Under section 17 of the Crime and Disorder Act 1998, the County Council has a duty to exercise its functions “*with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area*”. In this case, there is no adverse effect caused by the diversion of the path.
39. Finally, the County Council is subject to the public sector duty regarding socio-economic inequalities set out in section 1 of the Equalities Act 2010. With reference to paragraph 33a above, some people who are currently able to use the footpaths over the level crossing will be unable to use the stepped footbridge.

Conclusion

40. This proposal has been put forward on the basis that the available sight lines from the level crossing are considered to be non-compliant with Network Rail's criteria. It is Network Rail's view that there is a likelihood of a serious incident occurring here due to the lack of visual warning of approaching trains, providing insufficient time for users to pass over the level crossing. However, users of the crossing feel the sight lines are good and more importantly, there are no recorded incidents of near misses or fatalities at this level crossing. In addition, when considering convenience, the stepped bridge will prevent some users from being able to use the new route where they are currently able to use the existing route.
41. Therefore the County Council is not satisfied that it is expedient in the interests of the safety of users, or likely users, of the crossing that the level crossing should be closed. Further to that, the proposal to divert the footpath over the existing station footbridge will reduce accessibility for some users of the path to the extent that they will no longer be able to use it.

Recommendation

42. Therefore, it is recommended that the County Council declines to make an Order under Section 119A of the Highways Act 1980 to divert part of public footpath KH183 at Hollingbourne, as shown in **Appendix A** to this report.

Accountable Officer:

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The case file is available for viewing on request at the PROW & Access Service, Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Please contact the Case Officer for further details.

List of appendices

Appendix A - Plan of proposal

Appendix B - Extract from the Definitive Map, sheet 083 (TQ85NW)

Appendix C - Copy of the application

Case file - PROW/KH183/9/NR