

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Bobbing Village Hall, Sheppey Way, Bobbing, Sittingbourne ME9 8PL on Friday, 24 November 2023.

PRESENT: Mrs S Hudson (Vice-Chairman in the Chair), Mr P Cole, Mr M C Dance, Peter Harman and Mrs L Parfitt-Reid

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

UNRESTRICTED ITEMS

15. **Application to divert part of Public Footpath ZR681 from the foot crossing to a new route parallel to the northern platform at Teynham in the Borough of Swale**
(Item 3)

Mr Damian Hajnus (Network Rail), Rich Lehmann (Local Member), Mr David Lindop, Mr Steve Obeirne and Mr Paul Townson were in attendance for this item.

1. The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by Rich Lehmann (Local Member), Ms Gemma Kent from Network Rail (the Applicant) and approximately 8 members of the public. Panel Members inspected the crossing point and observed the visibility lines along the railway and viewed the route of the proposed footpath from the station platform.
2. Mr Michael Tonkin, Public Rights of Way Officer, introduced the report which set out the application the County Council had received from Network Rail to divert part of Public Footpath ZR681 at Teynham.
3. Mr Tonkin explained that a number of risk assessments had been carried out on the footpath crossing by Network Rail, and the crossing was currently closed under a Temporary Traffic Regulation Order (TTRO) due to associated risks and a near miss in November 2022. He explained that if the crossing were to be opened at the time of the meeting it would be the second highest risk footpath crossing in Kent.
4. Mr Tonkin said the number of train movements passing over the level crossing was averaged at 183 per day, with an up-line speed of 90mph, and a down-line speed of 75mph. He noted that the up-line speed had been restricted to 80mph in an attempt to mitigate the risk at the level crossing. The main concerns for Network Rail at the crossing were insufficient sighting, high level of users, misuse of the crossing, the proximity of the level crossing to a railway station, and a large number of vulnerable users, including the elderly and children.

5. Mr Tonkin explained the legislation in relation to the diversion of a public path at a rail crossing contained within Section 119A of the Highways Act 1980, and the tests and criteria, detailed in the report, to be considered under Rights of way circular 1/09.

6. Mr Tonkin said that consultations had been carried out as required by the Highways Act 1980 and a number of objections had been received. He highlighted an error in the report in that Councillor Lloyd Bowen, not Councillor Mike Whiting, had responded with an objection.

7. Mr Tonkin discussed the consultation responses and the evidence received in conjunction with each of the legal tests to be considered and concluded that the case was finely balanced and slightly weighted in Network Rail's favour. He said Network Rail had a safety case and, for the reasons set out in the report and explained to the Panel, the tests under Section 119A of the Highways Act 1980 had been met. He explained that some members of the public who responded objected to the considerably longer route and its convenience. He said rail crossing orders were invariably finely balanced, especially when the reason was on a basis of safety, and it was believed that Network Rail's safety case needed to be considered with greater weight. He referred to two recent rail diversion orders, in Otford and Whitstable, where safety was noted as the primary motivator for the diversion.

8. Mr Tonkin explained that the decision made by the Panel today was not the final decision and the next stage would involve a formal consultation.

9. Mr Tonkin recommended to the Panel that the Applicant be informed that an Order to divert Public Footpath ZR681 from the railway foot crossing to an alignment running parallel to the northern platform of Teynham Station in the Borough of Swale, be made.

10. Mrs Parfitt-Reid asked about the consideration of a footbridge and Mr Tonkin explained this had been discounted for accessibility reasons and clarified that there was not enough room at the site for a slope bridge.

11. Mr Cole agreed that the case was finely balanced and said there was a fundamental argument for freedom of choice. He felt that most behaviour-related safety risks included in the application could be applied to any crossing in the UK. He said people had the right to make decisions and questioned the timing of the application if safety incidents had taken place since 2017.

12. The Applicant, Mr Damian Hajnus (Infrastructure Liability and Contracts Manager – South Region, Network Rail) addressed the Panel. He said Network Rail was subject to a strict regulatory duty and its primary duty was to provide a safe and efficient railway network. He said it was a balancing exercise to ensure maximum safety to passengers and staff whilst trains ran on time. In 2019 Network Rail embarked on a strategy to reduce risk on crossings and this was therefore a preventative, not reactive exercise. Mr Hajnus reiterated the main risk factors included in the report and highlighted by the Public Rights of Way Officer, including the large number of users (and vulnerable users), the high speed of trains on the line and the limited time users had to react at sight of a train. Mr Hajnus said there had been repeated instances of misuse and the diversion had been carefully selected from a number of options, and the proposed route was much safer. He concluded that he was strongly in favour of the order being made.

13. Councillor Lloyd Bowen (Councillor to Teynham and Lynstead Ward, Swale Borough Council) addressed the Panel in objection to the application. He said he was a long-time user of the crossing, and the proposed diversion would have an effect on people's mental health and on the community. Councillor Bowen said not all eventualities could be covered and compared the crossing to others in the area. He suggested

potential adjustments that could be made and said it was essential that the voices of residents were heard. He said the closure of the crossing affected the connectivity and vitality of local business.

14. Mr David Lindop addressed the Panel in objection to the application. He referred to the proposed diversion route which included many trees that acted as a natural screen against the sound and light of the railway. He said the removal of trees would cause disruption and would have an impact on biodiversity and wildlife. Mr Lindop referred to the increase of crime and disorder at the station and said the proposed diversion would bring that closer to residents, including a risk of vandalism to property.

15. Mr Steve Obeirne addressed the panel in objection to the application and referred to the proposed division going through the station car park and said he was concerned for the road safety at the vehicular level crossing.

16. Mr Paul Townson (Chairman of Teynham Parish Council) addressed the Panel and said the crossing was a popular route for residents walking dogs, residents who lived in Conyer who were coming to Teynham to access the school and shops, and the pathway formed part of a fruit walk. He said safety was recognised by residents and he suggested some practical solutions to improve this. Mr Townson also raised some road safety concerns in relation to the proposed diversion.

17. Mr Rich Lehmann (Local Member) addressed the Panel and expressed the view that not enough consideration had been given to the current crossing and suggested some improvements to make the crossing safer including moving it further west, decreasing train speed limits, and additional warning signs. He questioned how much consideration had been given to alternative diversion routes and raised the issue of road safety risks of the proposed diversion and questioned whether the danger was being shifted from one place to another.

18. Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), as landowner, responded to some of the points raised. He said, regarding the possibility of a footbridge, Network Rail had considered all the issues including protective characteristics of individuals, value for money and the significant planning issues it would entail. He said Network Rail's principal objective was safety and level crossings were inherently dangerous. In terms of user behaviour and personal responsibility Network Rail considered everybody's safety which included those who were unwell, distracted, young or vulnerable. The mitigation of risk in relation to children had resulted in the speed of the trains being reduced and this was only done in exceptional circumstances. None of the mitigation measures considered would deliver value for money or reduce the risk. He said he was sympathetic regarding the safety of the proposed path behind the platform as it had not yet been tested, and it was expressed openly in the consultation that reasonable measures would be considered, however, he said there was not any evidence to support security issues on the proposed path. He said the land was bought for running the railway and it was not environmentally protected. Regarding road safety of the proposed diversion, he said this was raised early in the consultation with KCC highways and concluded that mitigation measures would be deployed and funded by Network Rail.

19. The Chair invited comments from the Panel.

20. Mr Harman thanked all those who spoke at the meeting. He acknowledged the importance of the safety issues within the risk assessment whilst noting that some level of risk had to be accepted. Mr Harman compared the level of risk against the practicality and cost of the proposed solution.

21. Mr Dance expressed concern for the brick railway building on the down side at the London side of the crossing hindering the vision of trains from London.

22. Mrs Parfitt-Reid said there was always risk and personal accountability could not be mitigated against. She said on balance the proposed diversion was costly for something not supported by the community.

23. Mr Cole questioned why, if safety was the primary element, applications had not been made earlier and whether full exploratory work into different mitigation measures had been explored.

24. The Chair put the recommendation set out in the report to the vote and the Panel agreed unanimously to refuse the order.

RESOLVED that the Applicant be informed that an Order to divert Public Footpath ZR681 from the railway foot crossing to an alignment running parallel to the northern platform of Teynham Station in the Borough of Swale has been refused.

16. Application to divert part of Public Footpath ZR109 from the foot crossing known as Simpsons Crossing at Bobbing in the Borough of Swale
(Item 4)

Mr Damian Hajnus (Network Rail), Mr Mike Baldock (Local Member), Mr Gareth Randall and Mr Graham Herbert were in attendance for this item.

1. The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by Ms Gemma Kent from Network Rail (the Applicant).

2. Ms Maria McLauchlan, Public Rights of Way Officer, introduced the report which set out the application the County Council had received from Network Rail to divert part of Public Footpath ZR109 at Bobbing.

3. Ms Maria McLauchlan said the most recent risk assessment was carried out on 2 March 2020 following a near miss on 21 February 2020. The crossing scored a risk rating of C3 (it was C5 in 2013) on Network Rail's All Level Crossings Risk Model ("ALCRM"). This meant it had a high to medium level of both individual and collective risk. At that time, the crossing was ranked as 13th out of all crossings in Kent, and 2nd highest for footpath crossings.

4. Ms McLauchlan said the key drivers for the application on the grounds of safety were frequency and variety of train movements (including the high-speed passenger services), high levels of use particularly of vulnerable users such as the elderly and children and increased evidence of misuse.

5. Due to the risks associated with the crossing, use of the footpath had been prohibited by a Temporary Traffic Regulation Order since March 2021, initially for a period of 6 months and then extended for another two years until September 2023. A further extension of 2 years had been granted by the Department of Transport, lasting until September 2025.

6. Ms McLauchlan explained that the same legal tests and government guidance to be considered under Rights of way Circular 01/09 were applied as in the case for Teynham West (Item 3) and as set out in the report.

7. Ms McLauchlan discussed the consultation responses and the evidence received in conjunction with each of the legal tests to be considered and concluded that in this case Network Rail had put forward such a safety case as to warrant a temporary Traffic Regulation Order closing the crossing until a suitable alternative could be found, and due to limitations at the site, it was recognised that alternative solutions were also limited. Whilst it was understood that the new route would inconvenience some users of the path, this diversion appeared to be the best proposal that could be found. She said officers were therefore satisfied, for the reasons set out in the report and explained to the Panel, that the legal test of safety was met and that other considerations had been applied.

8. Ms McLauchlan set out the recommendation that the Applicant be informed that an Order to divert part of public footpath ZR109 from the foot crossing, known as Simpsons Crossing, at Bobbing in the Borough of Swale be made on the grounds that it was expedient to divert the path on the grounds of safety of the public.

9. Mr Dance left the meeting.

10. Mr Harman asked about line speed and whether the biggest safety risk was the users rather than the crossing itself and Ms McLauchlan said the misuse of the crossing was part of the safety element.

11. The Applicant, Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), highlighted that the main risk factors were objective and included the frequency and speed of travelling trains (including variance in train speeds) which affected the perception of risk, and a large number of users were vulnerable ie they were children, the elderly or distracted which impaired their ability to react. He said the safety arguments were well tested and the crossing was evidently unsafe, and the crossing should be closed. He said Network Rail did not consider the risk would be displaced from railway to the road and it welcomed further enhancements to the proposed diversion being brought.

12. Mr Gareth Randall addressed the Panel in support of the application. He explained that whilst he was the Chair of Bobbing Parish Council, the Parish Council had not taken a formal position on the application and he did not speak on their behalf. He said the proposed diversion provided two additional benefits including accessibility (the current crossing had gates which were difficult to pass through for those with pushchairs and bikes) and the removal of the need for trains to sound their horns. Mr Randall said he took a pragmatic approach in that he would like access across the railway again for residents and he understood funding was not available for a bridge.

13. Mr Graham Herbert reinforced the points made by Mr Randall and raised the issue of vehicles parking alongside Sheppey Way Bridge, to which Ms McLauchlan confirmed officers had consulted with Kent Highways who were happy with the proposed diversion.

14. Mr Mike Baldock, Local Member, addressed the Panel in objection of the application and said he had personally used the crossing for 50 years and it had been used for generations by the public. Mr Baldock said, since the crossing was closed, there had been a greater number of safety incidents and the application had over exaggerated the risk and was misleading. He said examples of misuse could apply to any rail crossing. Mr Baldock said most users crossed safely and the claim the crossing was dangerous was unsubstantiated. He said there was a risk that people would continue to use the embankment to cross (via the bridge) if the crossing was not reopened and the proposed diversion under the bridge would be used for antisocial behaviour. Mr Baldock suggested the crossing be reopened with measures put in place to make it safer

including, for example, adequate signage and crossing lights, and that the risk be assessed again after a year.

15. Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), as landowner, responded to some of the points raised. He said the evidence in favour of the order was before the Panel and clarified that Network Rail had not made the application for convenience or to gain anything financially. He reiterated Network Rail's strict regulatory obligation for safety. He said every option had been explored to minimise the impact on the public and the proposed diversion was the only practicable option. In response to the allegation that Network Rail had exaggerated the evidence Mr Hajnas said they had video footage of people risking their lives on the railway. In relation to the risk assessment on the proposed diversion he said KCC were consulted and barriers alongside Sheppey Way would be enhanced. He said there was not any evidence to suggest that the proposed division would attract antisocial or criminal behaviour.

16. The Chairman invited comments from the Panel.

17. Mr Harman said fatalities by suicide were not a reason to close the crossing and suggested solutions could be put in place to deal with misbehaviour on the railway.

18. Mrs Parfitt-Reid felt this was a sensible diversion as it seemed relatively short but felt there was an argument for and against the recommendation.

19. Mr Cole referred to previous near miss incidents in 2019 and said an attempt to close it then was not made until one incident in 2020 which led to Network Rail applying for a TTRO. Mr Cole asked what the definition of a near miss was and whether anything had changed over the last four years since the incidents in 2019. Mr Hajnus said a near miss was identified at the discretion of the train driver if they were required to apply the emergency break, and it was their responsibility to report it. He said there were numerous other near misses reported as part of the TTRO application and Network Rail had been observing the crossing and working to make it safer for several years.

20. The Chair commented that she was aware of the video footage, but judgments should be based on the evidence presented in the report and to the Panel.

21. The Chair put the recommendation set out in the report to the vote and it was agreed by majority.

RESOLVED that the Applicant be informed that an Order to divert part of public footpath ZR109 from the foot crossing known as Simpsons Crossing, at Bobbing in the Borough of Swale, will be made.

17. Other items which the Chairman decides are urgent
(Item 5)

There were no urgent items.