

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	11 February 2015
<b>Title:</b>	Application for a Rail Crossing Extinguishment Order for part of Footpath No.3 in the Parish of Buriton
<b>Reference:</b>	6483
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** Esther Smeardon

**Tel:** 01962 832352

**Email:** esther.smeardon@hants.gov.uk

#### 1. Executive Summary

- 1.1. The purpose of this paper is to consider an application to extinguish part of Buriton Footpath No.3 ("FP 3") running from the boundary of Buriton Recreation Ground, across railway land in a generally south-westerly direction to the junction with Bridleway No. 4. The section proposed to be extinguished crosses the London – Portsmouth main railway line as a pedestrian level crossing ("Buriton Crossing"). This application has been made by Network Rail ("NR") in the interests of the safety of members of the public.
- 1.2. This paper seeks to provide Members with the necessary information with which to determine the application. The legislative process for determining an application such as this comprises two stages.
- 1.3. If it is considered that it is expedient in the interests of the safety of members of the public using it or are likely to use it to extinguish that part of Buriton FP 3 which crosses the railway, then Members' authority is required to authorise the making of an Order under s118A(1) and (2) of the Highways Act 1980 for this extinguishment. Issues such as whether or not the crossing could be made safe are irrelevant when considering whether an Order should be made.
- 1.4. If an extinguishment Order is made, it must then be formally advertised. If objections are received at this stage, the Order will be forwarded to the Secretary of State who will consider whether or not to confirm it. If no objections are received following this advertisement, then Members will themselves need to consider whether or not to confirm the Order.

- 1.5. The grounds for *confirming* an Order, as set out in section 118(4) of the 1980 Act are different to those which relate to *making* an Order, and this time do include whether the safety of the crossing can be improved.
- 1.6. The decision of the Regulatory Committee today applies only to the Order making stage, and Members' decision should be based only on whether or not the test set out in paragraph 1.3 of this report, and section 118A(1) of the 1980 Act is met. However, issues relevant to the confirmation stage have also been included in this report, for Members' information.
- 1.7. Network Rail has provided a comprehensive assessment of why they consider the crossing is unsafe. Local opinion appears divided, with strong views both for and against the closure. On balance, officers agree that it is expedient to extinguish the crossing in the interests of public safety, and therefore recommend that a closure Order should be made and advertised.

## 2. Legal framework for the decision

### *Consideration of whether an Order should be made*

- 2.1. Orders for the Extinguishment of Footpaths and Bridleways crossing railways may be made under Section 118A of the Highways Act 1980, inserted by the Transport and Works Act 1992, as follows:

**(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, other than by tunnel or bridge, should be stopped up.**

**(2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the right of way over the path or way –**

**(a) on the crossing itself, and**

**(b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).**

**(3) An order under this section is referred to in this Act as a 'rail crossing extinguishment order'.**

- 2.2. For clarity of the term 'expedient', it may be noted that in *The Health and Safety Executive v Wolverhampton City Council (2012)* it is stated that "The word 'expedient' implies no more than that the action should be appropriate in all the circumstances."

### *Consideration of whether an Order, if made, should be confirmed*

- 2.3. Such orders may be confirmed under Section 118A of the Highways Act 1980 as follows:

**(4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order**

***as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to all the circumstances, and in particular to –***

***(a) whether it is reasonable practicable to make the crossing safe for use by the public, and***

***(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.***

*Other Legislation / Government Reporting*

2.4. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 set out a 'Form of Request' for an extinguishment, to include:

- (i) the use made of the path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information;
- (ii) the risk to the public of continuing to use the crossing and the circumstances that have given rise to the need to make the Order;
- (iii) the effect of the loss of the crossing on users, in particular whether there are alternative rights of way, the safety of these relative to the existing rail crossing, and the effect on any connecting rights of way and on the network as a whole;
- (iv) the opportunity for taking alternative action to remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing;
- (v) the estimated cost of any practicable measures identified under (iv);
- (vi) the barriers and/or signs that would need to be erected at the crossing, assuming the Order is confirmed.

2.5. NR's work is governed by the Health and Safety at Work Act 1974, which places a statutory duty on them in relation to:

- (a) securing the health, safety and welfare of persons at work;
- (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work.

2.6. On 7<sup>th</sup> March 2014 the House of Commons Transport Committee ("the HOCTC") published a report on safety at level crossings. The report says that level crossings in the UK are generally safe, with improvements seen in the five years from 2009, NR having committed itself to reducing risk at level crossings by 25% over that period. The HOCTC identified that NR has been able to improve safety by closing level crossings, but further improvements may be progressively more difficult to achieve.

2.7. The HOCTC indicates that there are significant safety risks, with level crossings representing half of the non-suicide, non-trespass fatality risk on the railway. It sets out that the aim should be to aim to eliminate accidental deaths at level crossings with a recommendation that the Office of Rail

Regulation (“ORR”) adopt an explicit target of zero fatalities at level crossings from 2020. The ORR explains that this is not binding, but they find it significant and highly influential.

- 2.8. The HOCTC referred to the Law Commission having recognised that decisions about level crossings involve striking a balance between the convenience to communities in being able to cross a railway and public safety. The Law Commission recommended that consideration of the closure of level crossings should be based on a public interest test, considering a number of factors, including the safety of the public; convenience of the public; efficiency of the transport network (including the network of public paths); cost of maintaining the crossing; the need for the crossing and its significance for the local community (including the protection of heritage); and, the costs and environmental impact of any works needed to replace the crossing or upgrade other crossings. The HOCTC also called for the addition of a public safety test with respect to any alternative or diversionary route.

### **3. Parties to the Application**

- 3.1. The applicant is Network Rail Infrastructure Limited, Downside Goods Yard, Off Guildford Road, Woking, Surrey, GU22 7QE. NR is the landowner of the railway line and surrounding railway land.
- 3.2. The only other landowner is: Peter Lymn, Limeworks Cottages, Kiln Lane, Buriton, Hampshire, GU31 5SH.

### **4. The Existing Route and surrounding area**

- 4.1. The section of FP 3 that it is proposed should be extinguished is 55 metres in length, running between points A and B as shown on the plan in Appendix 1. This is comprised of 32 metres between point A and the railway which passes across privately owned land, and the remaining 23 metres which is maintained as a level crossing over the main railway line between London and Portsmouth.
- 4.2. There is a pedestrian gate in the line of the fencing on each side of the railway track. There are signs with the wording “Stop, Look, Listen. Beware of trains” on both sides of the track. On both sides of the railway, outside the Network Rail gates, a second pedestrian gate has been installed by the Parish Council, which incorporates a bolt on the inside of each gate. Photographs of the signage and the gates, and other relevant features, are included in Appendix 9.
- 4.3. The Buriton crossing is situated between Petersfield railway station to the north, and Rowlands Castle to the south. This entire section of the railway line is double track with a live rail. In the immediate vicinity of Buriton crossing, there is a railway tunnel 360 metres to the south and a curve in the track approximately 235 metres to the north. Whistle boards are sited both north and south of the crossing, indicating the points at which train drivers need to sound their horn to provide a warning to pedestrians. Train drivers are required to sound their horns between 7am and 11pm.

- 4.4. The village of Buriton lies to the north of the railway line, with the Recreation Ground being situated between the crossing and the village. FP 3 runs from Buriton High Street through the Recreation Ground to Buriton Crossing and then connects with Bridleway 4. The Recreation Ground has a play area, tennis court and skate board ramps, as well as a large mown grass area. The grounds of the Old Rectory lie to the east of the Recreation Ground and to the north of the railway line. The main residential area of the village lies to the north-west of Buriton Crossing.
- 4.5. Approximately 65 metres from Buriton Crossing along the railway line to the south-east is a railway underpass, which accommodates Bridleway 4. The Shipwrights Way, one of Hampshire County Council's promoted routes for walkers, cyclists and horse-riders, follows Bridleway 4 at this point. The distance along Bridleway 4 between the underpass and its junction with FP 3 is approximately 70 metres.
- 4.6. An alternative route to FP 3 could be followed along Bridleway 4, South Lane and High Street. High Street has a footway for pedestrian use, but there is no footway on South Lane. South Lane is a cul-de-sac and so does not carry through traffic.
- 4.7. The length of FP 3 from its junction with High Street to its junction with Bridleway 4 is 324 metres. The length of the alternative route between these two points, following High Street – South Lane – Bridleway 4 is 510 metres. This is a difference of 186 metres.
- 4.8. To the west of the Recreation Ground lies Kiln Lane, which runs approximately north-south and crosses the railway via an underpass. Kiln Lane has a steep gradient, is relatively narrow and has no separate footway, so pedestrians must share the highway with vehicles. Kiln Lane is considered to be less suitable than South Lane and Bridleway 4 as an alternative route to FP 3.
- 4.9. NR's application proposes extinguishing that part of FP 3 which falls within their ownership only. However, this would leave that section of FP 3 between Bridleway 4 and the railway boundary as a cul-de-sac path. The legislation permits the extinguishment of "so much of [the path's] length as [the authority] deem expedient from the crossing to its intersection with another highway". Officers suggest that an Order, if made, should extinguish the section of FP 3 between its junction with Bridleway 4 and the northern boundary of the railway. Officers recommend that the section of FP3 north of the crossing, through the Recreation Ground, should remain unaltered if an Order is made, because this retains the right of way regardless of land use, allowing any path changes to take place in the future if appropriate.
- 4.10. Site visits for members of the Regulatory Committee to enable members to view the crossing layout and observe the passing of trains over the crossing took place in December 2014 and early February 2015.

## **5. Details of the Application**

- 5.1. NR has made an application under section 118A of the Highways Act 1980, as shown in Appendix 2.

- 5.2. NR uses a model known as the All Level Crossing Risk Model (“ALCRM”) to assess risk at level crossings. This generates two risk scores<sup>1</sup>. The highest risk crossings are those which score A, B or C for individual risk and 1, 2 or 3 for collective risk. The current ALCRM risk score for Buriton Crossing is C4. Buriton Crossing therefore has a high individual risk (C), although the collective risk (4) is not assessed as high. (NR has advised that this is due to the fact that the chances of a pedestrian derailing a train and causing collective injury at Buriton Crossing are minimal.)
- 5.3. NR uses the ALCRM risk score plus additional information including numbers of train movements and levels of misuse to rank crossings on their network, the higher the ranking the greater the higher priority is given by NR. Using this system, Buriton Crossing ranks 25<sup>th</sup> highest risk out of 172 footpath crossings on the Wessex route, and 108<sup>th</sup> highest risk out of all 346 level crossings on the Wessex route. Within Hampshire, Buriton crossing ranks 6<sup>th</sup> highest risk, behind Farnborough North, Chandlers Ford, Darby Green (Blackwater), Parlour Gates (Basingstoke) and Alice Holt (Bentley Station). Nationally, Buriton Crossing ranks 408<sup>th</sup> highest risk out of 2871 footpath crossings and 1446<sup>th</sup> highest risk out of all 6891 level crossings. (NR has advised that using the all crossings figures compares footpath crossings with road crossings and this is not very helpful as the risk score of a road crossing will generally be higher as it includes the risk of derailment to a train, should an incursion with a vehicle arise.)
- 5.4. NR’s narrative risk assessment is included in Appendix 3. The Risk Assessment’s reference sources were a camera census, NR’s Safety Management Information System (SMIS) – a database for recording safety-related events, and South West Trains.
- 5.5. NR’s risk assessment used a line speed of 85mph, noting that the highest permissible line speed of trains is 85mph. Photographs are attached in Appendix 9 which show track side signage. NR has confirmed that these signs are showing the line speed: 70mph SE of the crossing and 40mph near the tunnel. These signs give direction to train drivers that they must comply with in relation to train speed and are noticeably different to those used in NR’s risk assessment.
- 5.6. The line speed is used when assessing the risk associated with sighting (the distance at which an approaching train can be seen). At a line speed of 85mph, the required sighting distance is 326 metres. The measured sighting distance on both sides of the crossing looking toward the down direction train approach (i.e. to the northwest) is 220 metres, measured to vegetation. Whistle boards are used to mitigate the deficiency in sighting distance. The optimum distance for the whistle boards is achieved on the down line (i.e. for

---

<sup>1</sup> The annualised probability of fatality to a “regular user” (assumed to be a person making a daily return trip over the crossing; assumed 500 traverses per year) with A the highest risk score and M the lowest; and, a collective risk ranking of between 1 (highest risk) and 12 (lowest risk) which includes the risk to train staff and passengers as well as users of the crossing. A collective risk of 13 is ‘zero risk’, this is given for crossing which are temporarily closed, dormant, or on mothballed lines.

trains travelling northwest to southeast). However as the boards can't be sited inside a tunnel, on the up line (i.e. for trains travelling southeast to northwest through the crossing) the boards are at a less than optimum distance from the crossing.

- 5.7. In summary, for trains approaching from the northwest, the sight lines are assessed as inadequate but are mitigated by appropriately placed whistle boards. For trains approaching from the southeast, although the whistle boards are not positioned optimally, the sight lines are assessed as adequate. The requirement for sighting is calculated from the line speed; if the speed of a train is reduced, there is a consequent decrease in sighting requirement. Whilst the permissible line speed of the section of track at Buriton Crossing is 85mph, several individuals have said that they have observed trains travelling more slowly than this. At Buriton Crossing trains are either accelerating out of the tunnel (through sections of track with a line speed of 40 mph and 70 mph), or they are slowing down to approach the tunnel (entering the 70 mph and then 40 mph zones).
- 5.8. Trains are timetabled to run for 20 hours a day. There is a blanket ban on the sounding of train horns between 23:00 and 07:00 hours. NR's narrative risk assessment estimates that 2% of users (an average of less than 1 per day) would use the crossing during the quiet period, and that such use would likely be by dog walkers using the crossing before 07:00.
- 5.9. NR's narrative risk assessment mentions vulnerable users and irregular users. The proportion of vulnerable users is not considered by NR to be high, based on available information. The number of irregular users is assumed to be high as the narrative risk assessment assumes that users will be using Buriton Crossing to access Queen Elizabeth Country Park and the surrounding countryside in the South Downs National Park. However it has also been stated by NR that irregular users may use Shipwrights Way, as it is a promoted multi-user route.
- 5.10. Other factors mentioned in NR's narrative risk assessment include an assessment of the crossing approaches, the heightened risk caused by trains passing each other at Buriton Crossing, and recorded incidents of misuse. The key risk drivers are identified as frequent trains and sun glare.
- 5.11. NR has listed the following as the key risk drivers on their application form:
  - (a) Barely compliant sighting of approaching trains due to the tunnel entrance
  - (b) Insufficient sighting due to track curvature
  - (c) Fast and frequent trains
  - (d) Deliberate and accidental misuse
  - (e) Sun glare / fog
- 5.12. The application form also cites a number of reported incidents of misuse at Buriton Crossing (actual dates have subsequently been provided). These are:

- (a) A near miss with 3 children playing ‘chicken’ on the crossing. (August 1996)
- (b) A child lying on the crossing causing the driver of a train to emergency break and come to a standstill. The driver was unable to continue. (May 2000)
- (c) 6 instances of adults and children trespassing (where NR states that people used the crossing to access the track), some of which have resulted in British Transport Police making arrests and individuals entering the tunnel. (April 1999, August 2000, July 2001, May 2003, February 2005 and May 2006)
- (d) Children throwing stones at trains. (May 2006)

5.13. The incidents reported do not include any accidents, injuries or deaths.

5.14. NR has investigated, and discounted, the following options for improving safety at Buriton Crossing:

Option considered by Network Rail	Network Rail comments
<p><b>Ramped or Stepped Footbridge</b></p> <p>Cost: £1,500,000 - £2,500,000 (Ramped Footbridge)</p> <p>Cost: £450,000 - £800,000 (Stepped Footbridge)</p>	<ul style="list-style-type: none"> <li>• ‘Due to the available space and land boundaries a ramped footbridge is not considered possible... A ramped structure would not be in-keeping with the area.’</li> <li>• ‘Due to the topography of the land and land boundaries it is not considered that a stepped footbridge could be provided at the site of the level crossing... the structure would be excessively large due to the steep embankments.’</li> <li>• ‘...the construction of a ramped footbridge or a stepped footbridge at Buriton given the vicinity of the nearby underbridge on South Lane could not be justified <i>[financially]</i> as well as being unfeasible.’</li> </ul>
<p><b>Subway</b></p> <p>Cost: £1,500,000 - £4,000,000</p>	<ul style="list-style-type: none"> <li>• ‘Due to the lay of the land, possibility of anti-social behaviour, light pollution from illumination and flooding risks a subway cannot be provided.’</li> </ul>
<p><b>Miniature Stop Lights <i>[for pedestrians]</i></b></p> <p>Cost: £400,000 - £700,000</p>	<ul style="list-style-type: none"> <li>• ‘...may be feasible but they do not fully control the risk. There is a reliance on users obeying the lights and signage and experience at other crossings indicate that we cannot be confident users will obey these safety indications.’</li> </ul>
<p><b>Reducing the line speed by a permanent speed restriction</b></p>	<ul style="list-style-type: none"> <li>• ‘The expectation of Government funding in Network Rail is that line speeds should increase, to reduce passenger journey times. They should not be permanently reduced on main line routes.’</li> </ul>



Indirect costs only	
<p><b>Footpath diverted along railway embankment to underpass on South Lane</b></p> <p>Cost: £250,000 +</p>	<ul style="list-style-type: none"> <li>‘Unfortunately this is not possible due to advice from rail engineers about potential interference to the embankment. This is particularly relevant given the history of embankment slides in the Petersfield area. Embankment slides cost millions of pounds and cause severe disruption to train services as well as being incredibly dangerous.’</li> </ul>
<p><b>Footpath diverted along Kiln Lane</b></p> <p>Not costed</p>	<ul style="list-style-type: none"> <li>‘It was thought by all parties that the route would be too dangerous for pedestrians given the traffic and the absence of a pavement through the narrow bridge.’</li> </ul>

## 6. Consultation and Equalities

6.1. Officers from the Countryside Service undertook a four-week consultation during October and November 2014, requesting the views of stakeholders, local residents and interested parties.

### *Stakeholder consultation*

6.2. 20 stakeholders were consulted on the proposal to extinguish part of Buriton FP 3 (consultation email is attached in Appendix 4) of which **16 responded**:

Name	Appendix	Response	Summary of grounds
Local Member Cllr Moon	5.1	Objects	<ul style="list-style-type: none"> <li>Extinguishment should be avoided</li> <li>Safety could be improved with mini warning lights or movement sensors</li> </ul>
East Hampshire District Council	5.2	Supports	<ul style="list-style-type: none"> <li>Incidences that have occurred are a current Health and Safety issue</li> <li>Alternative route (South Lane) is part of the Shipwrights Way and is not too much of a detour (even though it is acknowledged that the crossing is quite a popular route)</li> </ul>
East Hampshire District Cllr – Cllr Bartlett		No comment	
Buriton Parish Council	5.3	Objects	<ul style="list-style-type: none"> <li>Insufficient evidence to justify extinguishment</li> <li>Insufficient consideration of alternative options to improve safety and allow the</li> </ul>

			<p>crossing to remain open</p> <ul style="list-style-type: none"> <li>• FP3 is a valued footpath, eg. for short circular routes into nearby woodland</li> <li>• South Lane should not be viewed as an alternative because both paths form a circular route</li> </ul>
South Downs National Park Authority	5.4	Objects	<ul style="list-style-type: none"> <li>• Understand Network Rail's concerns over safety, but most relate to misuse or illegal use, which should be tackled by enforcement or education</li> <li>• There is good evidence that the path is well used and gives valued access to Buriton Chalk Pits and important areas in the National Park</li> <li>• Closing a valuable footpath such as FP3 does not accord with Section 62 of the Environment Act 1995</li> </ul>
Natural England	5.5	No objection	<ul style="list-style-type: none"> <li>• Appreciate the public safety issues of the railway crossing</li> <li>• The nearby alternative via South Lane underpass appears suitable</li> </ul>
Hampshire County Council – Area Countryside Access Manager	5.6	Comments	<ul style="list-style-type: none"> <li>• There are no recorded issues on Hampshire County Council's reporting system relating to the crossing</li> <li>• FP3 will become a dead-end if extinguishment takes place, although it will still provide access to the recreation ground</li> <li>• The alternative route along South Lane has no footway</li> <li>• A potential diversion exists on the railway embankment</li> </ul>
Hampshire County Council – Highways and Environment	5.7	Comments	<ul style="list-style-type: none"> <li>• No archaeological issues are raised</li> </ul>
Hampshire County	5.8	Supports	<ul style="list-style-type: none"> <li>• Safety would be significantly improved with closure of the crossing</li> </ul>

Council – Crime and Disorder Risk Advisor			<ul style="list-style-type: none"> <li>• Keeping people away from the railway line reduces crime and anti-social behaviour</li> <li>• Buriton is a very low crime area</li> </ul>
South Downs Local Access Forum	5.9	Objects	<ul style="list-style-type: none"> <li>• Evidence from Network Rail is inadequate justification for closing the crossing (more evidence should be provided) compared with the amount of use this path has</li> <li>• The alternatives to closure do not appear to have been costed in a serious way</li> <li>• “Barely compliant” means compliant</li> <li>• No information is provided about train speeds and what they would have to be to reduce risk</li> <li>• The length of South Lane as an alternative is misleading</li> <li>• There are obvious practical ways that the crossing could be made safer, in the absence of an alternative route</li> </ul>
South Downs Society	5.10	Objects	<ul style="list-style-type: none"> <li>• More detailed information about the safety aspects of the crossing is needed</li> <li>• Evidence suggests crossing is sufficiently safe</li> <li>• FP3 is well used</li> <li>• The alternative via South Lane is significantly longer and the short circular route FP3 provides would be lost with extinguishment</li> </ul>
The Ramblers – Hampshire Area	5.11	No objection	<ul style="list-style-type: none"> <li>• Network Rail's proposal is based solely on safety aspects</li> <li>• The alternative route is equivalent, much used and preferred</li> </ul>
The Ramblers – local affiliated group: 'Petersfield	5.12	Objects	<ul style="list-style-type: none"> <li>• Against closure unless an alternative is provided and in this case no suitable alternative is offered eg. bridges have been built at other locations</li> <li>• Further information is needed about</li> </ul>

Ramblers Club'			incidents
The Open Spaces Society	5.13	Comments	<ul style="list-style-type: none"> <li>• A diversion is preferred, ideally along the railway to link with South Lane</li> <li>• Discussed then discounted possibility of diversion along Kiln Lane</li> <li>• South Lane is actually more convenient and enjoyable than FP3, however this cannot be a reason to close the crossing</li> <li>• People use the crossing and closure would limit the possibilities for walkers</li> <li>• Speed and visibility of approaching trains is ok, only concern is proximity of pedestrians to trains when waiting to cross from steps and existence of recreation ground close by</li> </ul>
Buriton Primary School	5.14	Supports	<ul style="list-style-type: none"> <li>• Main priority is the safety and welfare of school pupils</li> <li>• As railway and crossing is in close proximity it presents a risk to the children</li> </ul>
Buriton Nursery School		No comment	
Buriton Walking for Health	5.15	Objects	<ul style="list-style-type: none"> <li>• Discount all the reasons Network Rail give for assessing the crossing as high risk and proposing its closure</li> <li>• Double gates installed by the Parish Council provide the crossing with adequate safety precautions</li> <li>• Access to the railway for malicious reasons is possible from other locations</li> <li>• Closure would reduce access to a popular woodland</li> <li>• People from the west of the village (the largest part) would find it more convenient to use Kiln Lane which is hazardous for pedestrians</li> <li>• FP3 has existed for generations</li> </ul>

Buriton Village Association	5.16	Objects	<ul style="list-style-type: none"> <li>• Cannot yet support the argument that FP3 should be extinguished</li> <li>• Question whether the evidence about incidents is accurate, relevant and up-to-date</li> <li>• Question how many incidents have occurred since the Parish Council installed extra gates</li> <li>• People can get onto tracks elsewhere</li> <li>• Ways to improve safety include vegetation clearance, warning lights for pedestrians and signs showing the alternative route – a combination could be introduced which would enable the path to stay open</li> </ul>
National Farmers Union		No comment	
Campaign to Protect Rural England		No comment	

*Local resident consultation*

6.3. Local residents living within 1 kilometre of Buriton Crossing were consulted, via a letter and a questionnaire which was delivered to 242 households, as shown in Appendix 6. 93 responses were received (38.4% response rate). Responses are summarised below and reproduced in Appendix 7, with an additional document submitted by a local resident in Appendix 11.

Usage

6.4. Buriton Crossing appears reasonably well used by local residents, although the majority of respondents use it once a month or once every 6 months or less.

6.5. Use appears to be primarily between 7am and 11pm – only 3.2% of respondents use Buriton Crossing between 11pm and 7am when trains do not sound their horns.

Safety perception

6.6. Buriton Crossing is considered safe or very safe by 50.5% of respondents and 43.0% say they feel unsafe or very unsafe (6.5% have not responded).

### Convenience

- 6.7. 65.6% of respondents said they would not be inconvenienced if the crossing was closed, 32.3% said they would be inconvenienced (2.1% have not responded).

### Preference on closure

- 6.8. The majority (55.9%) of respondents said they would like the crossing closed, 36.6% said they would like it to remain open (7.5% have not responded).

### Safety improvements

- 6.9. When asked what improvements they would like to see, miniature stop lights for pedestrians were the most favoured option, followed by improved safety gates. Of those responding, the next highest number have said that no safety improvements are needed. Improved sight lines for trains and pedestrians, improved signage for pedestrians and a footpath diversion along the railway embankment have also been indicated as ways to improve safety from the options on the questionnaire.

### *Path users and interested individuals consultation*

- 6.10. A sign was displayed on site informing path users of the extinguishment proposal and asking for comments. Responses to the consultation were also received from interested individuals and both are included in Appendix 8.

## **7. Comments on the Public Consultation Replies**

- 7.1. The local residents' views on the crossing are evenly spread with around half of respondents having the view that the crossing is safe or very safe and saying that they have not experienced any problems, and the other half saying that the crossing is unsafe or very unsafe and they can recount bad experiences or misuse. Consequently, there are conflicting local opinions, with each side believing that their case is in the public interest: one to close Buriton Crossing for the safety of the public who might use it; and, the other relating to the value to the community of retaining Buriton Crossing.
- 7.2. Many respondents say that long term use indicates the crossing is safe – and there are residents who quote decades of use without problem. There have been no fatalities and relatively few reported incidents. On the other hand many are saying it is an accident waiting to happen.
- 7.3. Some inconvenience would be felt if Buriton Crossing were to close. Some residents who would like to keep Buriton Crossing open describe the circular walk which it forms a part of, and feel that the Recreation Ground would be somewhat of a 'dead-end' without Buriton Crossing.
- 7.4. Some respondents made a connection between the desire of some residents for the sounding of train horns to cease and the proposal to close Buriton Crossing. This connection was also mentioned in NR's application. It should be noted that the sounding of the horn is not a relevant factor in the decision-making process for this application.

- 7.5. Existing alternative routes along South Lane, or Kiln Lane, do provide access from the village into the woodland, but these are longer (in the case of South Lane) or along a road with no footway (Kiln Lane).

**8. Consideration of Section 118A(1): Whether an Order should be made**

- 8.1. NR has submitted an application for a rail crossing extinguishment Order. Section 118A(1) of the 1980 Act sets out that before making the Order, it must appear to the council that it is “expedient in the interests of the safety of members of the public using it, or likely to use it” that the footpath crossing the railway should be stopped up.
- 8.2. Safety should be considered not only in relation to the physical features of the crossing, but also where risks arise from the way in which users are using the crossing, including if there is misuse.
- 8.3. As noted in paragraph 2.4 above, the 1993 regulations set out that in making their application, NR should provide information on a number of matters, including “...the effect of the loss of the crossing on users, in particular whether there are alternative rights of way, [and] the safety of these relative to the existing rail crossing...” NR has provided this information in response to g(iii) on page 6 of the submitted application.
- 8.4. It is inevitably hazardous for pedestrians to walk across railway lines, even when adequate precautions are in place. In the case of Buriton FP 3, no accidents have occurred on or near the crossing. NR has recorded a number of incidents at or near the crossing, however none of these relate to pedestrians using the crossing as part of the footpath, rather they relate to trespass or irresponsible behaviour.
- 8.5. Local opinion is divided, and some of the objectors to the closure feel that the safety issues require further investigation or that insufficient evidence has been provided. Other respondents highlighted significant safety concerns. Many of the objections also made comment on how the safety of the crossing could be improved.
- 8.6. NR’s risk assessment is based on a line speed of 85mph in both directions. It is not known at what speed the trains are travelling at Buriton Crossing as the speed reduces to 70mph and then 40mph to go through the tunnel. The risk assessment and sighting requirements are not based on the actual speed of the train.
- 8.7. The application form submitted by NR states, on page 4, that the path is only suitable for ‘able bodied’ walkers. However, the application form goes on to say that the Risk Assessment recognises vulnerable users, a category which includes those people who are ‘mobility impaired’.
- 8.8. The risk assessment process may give different results if the actual train speed, as opposed to maximum line speed, was used, and if the crossing had not been assessed for use by people with ‘mobility impairments’.
- 8.9. Nevertheless, NR has assessed the crossing as high risk and has made an application to stop it up. NR has provided significant evidence that the crossing does present a risk to the public. If it is considered that the

crossing poses any risk to users, and that stopping it up would remove that risk, then it can be concluded that it would be interests of the safety of those using the crossing to stop up the footpath.

- 8.10. Officers consider that, on balance, the requirements of s.118A(1) HA 1980 have been met.

## **9. Other matters for information**

- 9.1. Whilst the question of Order confirmation is not relevant to this stage of decision making, Members may find it useful to have further information on this, particularly as many consultees proposed suggestions as to how the crossing could be made safer.
- 9.2. If a rail crossing extinguishment Order is made and is opposed, then it may be submitted to the Secretary of State who will decide whether or not to confirm the Order (following an exchange of written representations, public Hearing or Inquiry). Alternatively, a decision may be made to abandon the opposed Order.
- 9.3. If a rail crossing extinguishment Order is made and is not opposed, then the County Council may confirm the Order if it is satisfied that it is expedient to do so having regard to all the circumstances.
- 9.4. The primary focus of this confirmation stage is the practicability of making the crossing safe for use by the public and the arrangements for barriers and signs. Other matters may also be considered.
- 9.5. The 1993 regulations require NR to provide information about options to “remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing.” NR has provided this information in response to g(iv) and g(v) on page 6 of the submitted application. The following paragraphs set out the available options:

### Bridge or tunnel

- 9.6. NR has discounted these options on the basis of high cost or lack of feasibility. It is accepted that in this particular location a bridge would not be appropriate, due to the gradients involved and the visual impacts a bridge would have in this rural location in the South Downs National Park.

### Improvements to sighting for pedestrians approaching from the recreation ground, and looking to the northwest from Buriton Crossing

- 9.7. It is considered that vegetation clearance on the railway embankment, especially at the curve in the track, would be beneficial for safety. The narrative risk assessment notes that the sighting distance is measured to the vegetation. This is illustrated by Figure 14 in Appendix 9. NR has not put forward on their application form that additional vegetation clearance would be an option to improve safety.

### Crossing deck

- 9.8. Many public consultation responses noted a slippery surface to the crossing deck when wet or frosty. The slope in the crossing deck when combined with



a slippery surface may increase the risk of falling over and may also increase crossing time. Alterations to the surface and level of the crossing deck appear to be practicable, with a report by the Rail Safety and Standards Board Ltd of research into the causes of pedestrian accidents at level crossings and potential solutions, July 2014 (“T984”) showing improved crossing surfacing as a low cost, mandatory improvement. It is considered that an improved, non-slip, surface would improve the safety for users of Buriton Crossing. The crossing deck is described in the narrative risk assessment. NR has confirmed that improvements to the decking will take place in April 2015.

### Signage

- 9.9. Photographs of existing signage are included in Appendix 9. The Level Crossing Risk Management Toolkit (“LXRMTK”) sets out that the provision of a sign reminding dog owners to put dogs on a lead whilst traversing the rail crossing is a suitable mitigation measure. The ORR *Level crossings: a guide for managers, designers and operators* indicates that simple signs giving clear instructions to users on how to cross safely may be provided. This is low cost and the use is established elsewhere. The instructions on the signs may or may not be enforced, however, general conformity to them by users in this area is considered to be reasonably likely.
- 9.10. Additional safety and/or information signage could be erected. For example, a sign informing regular or vulnerable users of the existence of the alternative route via a subway crossing. NR has not put forward on their application form that improvements to signage would be an option to improve safety.

### Train speed restrictions

- 9.11. NR referred to the option of reducing train speeds in their application, rejecting it on the basis of a Government expectation of reducing passenger times by increasing speeds, rather than decreasing them. The LXRMTK shows that speed reduction provides an effective means of reducing the potential for and consequences of collisions on level crossings. However, the more recently published T984 indicates that the occurrence of accidents does not change with train speed and so this is not, by itself, a risk factor. It is accepted that reducing the line speed may not be a realistic option due to the resultant effect on passenger journey times.

### Miniature stop/warning lights

- 9.12. NR has rejected the installation of Miniature Stop Lights (MSL) on the basis of high cost and low risk reduction. Some public consultation responses suggest the installation of miniature warning lights (“MWL”) on or at the gates. The House of Commons Transport Committee (HOCTC) document indicates that just over 100 level crossings have MWL for pedestrians and that it is a legal requirement for pedestrians to stop when MWLs show red. However, it was also documented in the HOCTC document that long delays between MWLs changing to red and a train passing can lead to increased risk-taking.

- 9.13. Taking account of the Rail Accident Investigation Branch (RAIB) report it is not considered that the installation of MSL/MWLs would necessarily be a reasonably practicable means to improve the safety of Buriton Crossing for users.

Diversion along railway embankment

- 9.14. This option was discussed in NR's application. However, it was rejected on the advice of NR engineers that it would cause instability of the railway embankment. NR also investigated and subsequently dismissed the construction of a boardwalk for the same reasons. (NR has, at the time of writing, not yet provided a more detailed response from their Engineers as to why this option is not possible, despite numerous requests.) Hampshire County Council Structures Engineer has said that a diversion along the railway embankment may be a feasible option (see Appendix 10).
- 9.15. The main objections to the proposed extinguishment were based on the desirability of keeping the route open for use by local people and visitors to access the woodland from the Recreation Ground. Whilst those supporting the proposal argued that alternative routes were available for such access, and that the alternatives were preferable due to them having no steps, and good views of the pond and church, the objectors argued that the available alternative routes were not as convenient (South Lane) or safe (Kiln Lane) as the FP 3 route itself. It was claimed that the combination of existing routes provide a circular walk of a desirable length, which the proposed extinguishment would disallow. A diversion of FP 3 along the north east side of the embankment to join Bridleway 4 at its junction with South Lane would both remove any safety risk posed by the railway crossing and allow access to the woodland directly from the Recreation Ground.

*Officers comments:*

- 9.16. A number of safety improvements have been identified as being possible. NR has commented on individual improvements, and it has concluded that no single improvement would be appropriate. However, no assessment has been made of the cumulative effect of the less costly options, such as the removal of vegetation to improve sight lines, the installation of improved signage, and improvement of the surface of the crossing deck.
- 9.17. In considering the expediency of confirming the Order, all the circumstances should be considered. Officers considered whether it might be possible to divert FP 3, rather than extinguish the rail crossing. A diversion from point B on the plan to join Bridleway 4 at its junction with South Lane has been considered and opinions of engineers differ as to the feasibility of this option.
- 9.18. NR's application form (page 7) states that an extinguishment should be a last resort after all other options have been exhausted. Officers are of the opinion that options to improve safety have *not* been exhausted: there is scope to improve the safety of the crossing, and that further discussion is required on the feasibility and practicability of these options before the Order can be confirmed.

**10. Recommendations**

- 10.1. That a rail crossing extinguishment Order be made to stop up Buriton Footpath 3 between points A and B on the plan in Appendix 1.
- 10.2. In the event that such an Order is made and is opposed, that the Order be referred to the Secretary of State for determination.
- 10.3. In the event that such an Order is made and is not opposed, that the Order is returned to the Regulatory Committee for further consideration and determination.

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	

<b>OR</b>
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: its part of our Regulatory functions upon which a decision is required.</b>

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<b>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</b>	
<u>Document</u>	<u>Location</u>
General Correspondence	Hantsfile Reference: Orders by Parish\Buriton
PPO Proposal File: Buriton FP3	Countryside Access Team, Countryside Service, Castle Avenue, Winchester, SO23 8UL

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

#### **1.2 Equalities Impact Assessment:**

The proposal is unlikely to have any impact, or a very minimal impact, on equality and diversity in this area. The only people affected by the proposed extinguishment and use of the slightly longer alternative route, would be those who are unable to walk slightly longer distances.

Mitigation for the proposal would be a diversion along the railway embankment connecting FP3 with South Lane because this would be a shorter alternative route.

### **2. Impact on Crime and Disorder:**

2.1. The proposal may reduce crime and disorder in this area, however the area currently has very low crime levels and the access which the crossing gives to the railway could be gained at other nearby locations, or even created by illegal access.

### **3. Climate Change:**

3.1. The proposal is unlikely to have any significant environmental impacts and will not impact on the carbon footprint or energy consumption of Hampshire County Council. The proposal is unlikely to have any significant impacts on the need to adapt to climate change and be resilient to its longer term impacts.