

## **Rights of Way Report**

### **Network Rail's application to extinguish part of Buriton Footpath No. 3**

As reported at previous meetings, Network Rail has submitted an application to HCC to extinguish (permanently close) that part of Buriton Footpath No.3 where it crosses the railway line.

Following a consultation exercise, HCC considered this application at a meeting on 11 February and resolved that a rail crossing extinguishment Order should be made; that if such an Order were to be opposed then it should be referred to the Secretary of State for determination; and that if the Order were unopposed then it should be returned to HCC's Regulatory Committee for further consideration.

The full report to HCC's committee meeting (with supporting documents) is available here: [http://www3.hants.gov.uk/councilmeetings/advsearchmeetings/meetingsitemdocuments.htm?sta=&pref=Y&item\\_ID=6483&tab=2&co=&confidential=](http://www3.hants.gov.uk/councilmeetings/advsearchmeetings/meetingsitemdocuments.htm?sta=&pref=Y&item_ID=6483&tab=2&co=&confidential=) The report explains that the legislative process for determining Network Rail's application requires two stages to be undertaken: (i) the consideration of whether an Order should be made and (ii) consideration as to whether it should be approved.

HCC have considered the first of these two stages with the second stage yet to be considered.

The first stage involves the consideration of whether it appears expedient to the County Council to close a footpath in the interests of the safety of members of the public using it or likely to use it.

The second stage, which is yet to be considered, involves the consideration of whether it is reasonably practicable to make the crossing safe for public use.

Following its decision on 11 February, the County Council has recently (20<sup>th</sup> March) published a Rail Crossing Extinguishment Order which is being advertised for six weeks. This invites comments from local organisations and individuals. If there are objections to the proposal to extinguish the footpath then the County Council is likely to refer the matter to a Government Inspector for an independent assessment. As well as considering the County Council's initial decision, the Inspector would also consider the second stage of the process. This assessment could be done by simply considering all the written representations received or through an informal hearing or through a more formal public inquiry. The Parish Council has already explained this process to all parishioners by producing a short "What happens next?" leaflet for distribution with Parish Magazines in March. To be sure of being involved in the process, it is important for all responses to the Extinguishment Order to be received during the consultation period, explaining the grounds on which representations are being made.

At its meeting in November 2014 the Parish Council decided unanimously to respond to HCC's initial consultation exercise by stating that, in the absence of any of the information which the Council had been seeking from Network Rail, it was felt that an adequate case to extinguish this Right of Way had yet to be made. It was agreed to include points about the nature of Network Rail's evidence and the apparent inadequacy of Network Rail's consideration of alternative options to avoid extinguishment in the response.

At previous meetings the Parish Council has expressed disappointment about how Network Rail has handled this matter: failing to involve or consult the Parish Council in any meaningful way over a number of years and failing, despite repeated requests, to provide any evidence about problems at the crossing or any costed information about alternatives to extinguishment. The Parish Council has been frustrated that evidence that might have helped the Council take an informed view on the matter had never been provided.

The County Council's consultation quoted some factors which Network Rail considers cause risks at the crossing point and some 'reported incidents' which Network Rail had cited (three one-off incidents and "numerous instances" of trespassing). The Parish Council had asked Network Rail for more detail about these factors but none were ever provided. No dates or details of any of the incidents were provided and it was felt that it was possible that some may stretch back over many years – prior to the installation of extra safety gates by the Parish Council.

It appears that the County Council had also been struggling to obtain detailed information from Network Rail (eg. paragraphs 5.12 and 9.14 of its Committee Report) and its public consultation exercise took place without the dates of incidents etc being known.

The Parish Council was not alone in suggesting that Network Rail had yet to make an adequate case to extinguish this Right of Way. Similar comments were also received from County Councillor Ken Moon, Buriton Walking for Health Group, Buriton Village Association, the Petersfield Ramblers Group, the South

Downs Local Access Forum, the South Downs Society and the South Downs National Park Authority. Organisations which supported Network Rail's application to extinguish the footpath were: HCC's Crime and Disorder Adviser, EHDC and Buriton Primary School.

HCC's report explains that in total, of 20 stakeholders consulted, 8 objected to Network Rail's application, 3 supported it and others made comments or failed to respond.

The results of HCC's consultation of local residents were as follows:

242 households consulted (within 1km of the crossing) with 92 responding  
40 said that they feel that the crossing is unsafe or very unsafe  
47 said that they feel that the crossing is safe or very safe  
61 said that they would not be inconvenienced if the crossing was closed  
30 said that they would be inconvenienced  
34 said that they felt that the crossing should not be extinguished  
52 said that they felt that the crossing should be extinguished

The question about extinguishing the crossing had simple 'yes / no' answers. There was not a question which asked: if the safety of the crossing could be improved, to the satisfaction of experts, do you think that the footpath should be extinguished?

When asked, rather than extinguishment would you like to see any safety improvements implemented, respondents gave the following answers:

Ramped footbridge: 3  
Stepped footbridge: 8  
Subway: 5  
Miniature stop lights (for pedestrians): 22  
Reduced line speed: 9  
Footpath diversion along railway embankment: 13  
Traffic Regulation Order: 2  
Improved safety gates: 18  
Improved signage for pedestrians: 13  
Improved sight lines for trains and pedestrians: 14  
Other: 3  
None – it is fine as it is: 15

Since the survey was conducted Network Rail has provided HCC with the dates of the incidents that had been reported in the questionnaire. Of the nine incidents, one was in 1996, one in 1999, two in 2000, one in 2001, one in 2003, one in 2005 and two in 2006. The most recent incident (children throwing stones at trains) was in May 2006.

All of these incidents took place before the Parish Council installed the extra pair of gates in January 2008.

It is not possible to assess whether any of the survey results would have been different had this information been provided by Network Rail prior to the survey.

The lack of this information was one of a number of reasons why the Parish Council felt that Network Rail had yet to make an adequate case to extinguish this Right of Way.

Other points which may still be of relevance include other aspects of Network Rail's evidence and an adequate consideration of alternative options to avoid closure / extinguishment of the footpath:

#### Network Rail's evidence

A number of objectors pointed to inadequacies and/or shortcomings in the evidence provided by Network Rail, including aspects of the ALCRM computer model which generates risk scores for level crossings (ALCRM = All Level Crossing Risk Model).

A number of local authorities around the country have been rejecting applications from Network Rail for rail crossing extinguishment orders as they have not been satisfied with Network Rail's safety assessments. In a recent letter from a Government Minister, Dan Rogerson, to the Managing Director of Network Rail, the Government has made it clear that: 'It is perfectly proper for authorities not to accept safety reports at face value, and to test them.'

There are a number of detailed points which have been raised in connection with the Buriton crossing:

- The computer model which provides the risk scores is far from comprehensive: it seems that it can take no account of safety measures introduced on land not owned by Network Rail (in this case, the extra pair of safety gates introduced on each side of the crossing point: these count for nothing in Network Rail's assessment)
- Also, the computer model is based on 'track speed' (85 mph) whereas the actual speed of trains can be much slower (this is true in the Buriton case where there is a lower speed limit within yards of the crossing point and so no trains ever cross the crossing at or near 'track speed')
- In the computer model, the distance at which an approaching train can be seen is measured to some vegetation. If this vegetation was cut back (and it would appear that it is either on Network Rail's own land or on Parish Council land) then the sighting distance would be longer and this could change the safety assessment
- There may also be doubts about the computer model assuming that the crossing is used by people with mobility impairments (when there is a steep flight of steps at one side) and about the proportions of regular and irregular users being assumed
- In addition, an extra second appears to be being added onto the crossing time in the computer model because of a single step up onto the crossing deck on the southern side of the tracks.
- All the incidents of misuse cited by Network Rail appear to have taken place before the extra gates were introduced by the Parish Council.

The Rights of Way Committee suggests that the Parish Council continues to try to get answers to these issues by including them in its response to the County Council in the current consultation on the advertisement of the Extinguishment Order.

#### Consideration of alternative options to avoid closure / extinguishment of the footpath:

- In its application to the County Council, Network Rail ruled out a small number of alternative options – but without providing any detailed reasoning. A number of objectors questioned this approach and, as reported in November, some parishioners suspected that costs may be an important 'behind the scenes' factor whereas the information reported from Damian Hinds suggests that this should not be the case
- It may yet be possible for a range of alternative measures to be introduced for the Buriton crossing so that the footpath could remain open:
  - improved safety gates
  - warning lights for pedestrians when trains are approaching
  - improved signage for walkers
  - improved sight lines for trains and pedestrians (cut back some vegetation)
  - extend the speed limit for the Buriton tunnel by a few yards to take in the crossing point (this may not affect journey times at all)
  - explore the proposal for a diversion along the railway embankment.

Network Rail has told the Parish Council that some (if not all) of these measures could be introduced or undertaken at Buriton – and it is possible that each one of them could reduce risks at the crossing point. The Parish Council has offered to work with Network Rail (and with other stakeholders) to see if it is possible to devise a suitable package of measures but Network Rail has never agreed to do this.

If it was possible to improve the safety of the crossing point (to the satisfaction of experts) by any of the above measures (or by a combination of a number of them introduced together) then it may yet be possible to keep the Right of Way open for those wishing to use it whilst addressing concerns of those worried about safety.

This approach would appear to satisfy all those who have been involved in this matter and the Rights of Way Committee therefore suggests that the Parish Council makes these points in its response to the current consultation on the advertisement of the Extinguishment Order.

In order to be referred to the Secretary of State, the Council's submission needs to be an objection to the Extinguishment Order. An objection by the Parish Council would enable all parishioners to 'have their say' to an independent inspector whereas other courses of action would not achieve this.