

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods
Title:	Proposal for the extinguishment of public rights – Rushmoor Bridleway 24 and dedication of Footpath Rights Sections 118A and 26 of the Highways Act 1980

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1. Reason(s) for the Decision

1.1 The purpose of this paper is to consider an application to extinguish part of Rushmoor Bridleway 24 at a point where it crosses a railway line at Farnborough North Station.

1.2 A dedication of footpath rights to be agreed in principle and drafted over stepped Bridge prior to the making of the Order.

1.3 The application, which seeks to extinguish the bridleway away from the 'at grade' crossing and dedication of footpath rights onto a new stepped pedestrian bridge, has been made by Network Rail in the interests of the safety of members of the public. Network Rail has provided a Narrative Risk Assessment (**see Appendix 2**), setting out its reasons for seeking the extinguishment.

1.4 If it is considered expedient in the interests of public safety to extinguish that part of Bridleway 24 which crosses the railway, and authority is required to authorise the making of an Order under s118A of the Highways Act 1980 for this extinguishment. Issues such as whether or not the crossing could be made safe are not relevant when considering whether an Order should be made in the first instance.

2. Legal framework for the decision

118A Stopping up of footpaths, bridleways and restricted byways crossing railways

(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, bridleway or restricted byway in their area which crosses a railway, otherwise 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 public right of way over the path or way -

(a) on the crossing itself, and

(b) or 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”.

(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 to do so having regard to all the circumstances, and in particular to -

- (a) whether it is reasonably 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.*

(5) Before determining to make a rail crossing extinguishment order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.

(6) A rail crossing extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

(7) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing extinguishment orders.

(8) In this section -

- “operator”, in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;*
- “railway” includes tramway but does not include any part of a system where rails are laid along a carriageway.*

Rail Crossing Extinguishment and Diversion Orders Regulations 1993

The 1993 regulations set out a ‘Form of Request’, which must include:

- 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;*
- 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;*
- 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;*
- 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 and the estimated cost of any practicable measures identified;*
- The barriers and/or signs that would need to be erected at the crossing, assuming the Order is confirmed.*

3. Government Reporting

3.1 Network Rail's work is governed by the Health and Safety at Work Act 1974, which places it under a statutory duty to:

- (a) secure the health, safety and welfare of persons at work;
- (b) protect 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.

3.2 On 7th March 2014 the House of Commons Transport Committee (HOCTC) published a report on safety at level crossings. It found that level crossings in the UK are generally safe, with improvements seen in the five years from 2009, Network Rail having committed itself to reducing risk at level crossings by 25% over that period.

3.3 The HOCTC nevertheless found that there are still 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 independent safety and economic regulator for Britain's railways, the Office of Rail and Road (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.

3.4 In its 2014 report, the HOCTC made reference to a report published by the Law Commission the previous year, which 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 "non-hierarchical" and "non-exhaustive" list of the following factors, including (but not limited to):

- 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);
- the costs and environmental impact of any works needed to replace the crossing or upgrade other crossings.

3.5 The HOCTC also called for the addition of a public safety test with respect to any alternative or diversionary route.

4. Description of the route

4.1 Bridleway 24 commences at a junction with Farnborough Street (U351), which is a cul-de-sac road leading to Farnborough North station (see Figure 1 below).

4.2 From here the bridleway runs north-eastward across the railway line, perpendicular to the tracks through a set of gates and Miniature Signal Lights ('MSL') on both sides of the line. The total length of the route crossing the rails between the gates is approximately 10 metres.



Figure 1 – Looking at Farnborough North station from the west



Figure 2 – Closer view of the crossing from the west



Figure 3 - View of the crossing looking south from the eastern platform



Figure 4 – View of the crossing looking south from the western platform

4.3 On the eastern side of the line the route continues for a further 165 metres on a metalled access road that crosses a bridge on the A331 dual carriageway to the county boundary. The extent of the route that is the subject of Network Rail's application (is a total of 17 metres) and is shown on the accompanying plan between Points A-B.

4.4 From the county boundary, the route continues eastwards as a bridleway in the County of Surrey for a further ½ kilometre to a second crossing (known as 'The Hatches'), it is understood that this crossing is to be the subject of a separate application by Network Rail in due course.

4.5 Following representations from Network Rail, a traffic regulation order was made in July 2012 under the provisions of the Road Traffic Regulation Act 1984 to prohibit equestrian access over Rushmoor Bridleway 24. Network Rail does not propose to reinstate equestrian access as part of its current application, and it is

of the view that there is no such requirement as the bridleway does not connect with any other off-road rights of way in the area. If successful, the upshot of the application would be a bridleway terminating at the east side of the station, continuing as a footpath over the newly constructed footbridge.

5. Details of the Application

5.1 Network Rail made the application under section 118A of the Highways Act 1980. The decision to apply for an extinguishment of the crossing was made after Network Rail reportedly exhausted other options for achieving a diversion which would have seen the bridleway status retained.

5.2 In substitution for the existing 'at-grade' level crossing, Network Rail proposes to construct a new stepped footbridge north of the existing crossing, within the footprint of the station. It is intended that a right of way on foot will be dedicated over both the bridge and the approaches to it from Farnborough Street and the unaffected part of Bridleway 24. The dedication will not include a right to ride bicycles (as is incorporated in a public bridleway), and although at other locations some stepped railway bridges have been equipped with cycle gutters to aid transportation of bicycles over the railway line, Network Rail has stated that they would create an additional trip hazard for pedestrians, and has pointed to the fact that the new lift within the station will provide assistance to cyclists between the hours of 6am and midnight (which it says is in line with the recorded use of the crossing). Because it is not intended that the lift should form part of the public right of way network, the effect of the application would be to remove the currently recorded right of way for cyclists, and to remove the right of way for equestrians (which despite being temporarily suspended by virtue of the TRO, still legally subsists).

5.3 Network Rail uses the All-Level Crossing Risk Model ('ALCRM') to assess risk at level crossings. ALCRM measures two different levels of risk, collective risk and an individual risk of fatality. Collective risk is a measure of the total harm or safety loss and is expressed in terms of fatalities and weighted injuries per year, and is shown in a simplified form, expressed as a number ranked from 1 to 13 with 1 representing the highest risk. The risk to an individual is presented as an individual risk of fatality per year of use of the level crossing. ALCRM calculates this risk as the 'probability of fatality' expressed by letters A to M with A representing the highest risk. The current ALCRM risk score for the Farnborough North crossing is E2, representing both a high individual and collective risk.

5.4 Network Rail 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 higher priority is given by Network Rail. Using this system, in terms of risk the Farnborough North crossing ranks 4th out of 151 open footpath/bridleway crossings on the Wessex route at the time of assessment (despite being equipped with unique and expensive risk mitigation measures). The current risk profile would be 90% higher if there were no crossing attendants.

5.5 The following key risk drivers were identified by ALCRM and contributed towards the risk score as the primary reasons for seeking the extinguishment:-

- **Passing Trains**

A high risk at crossings with two or more lines arises from a second train approaching the crossing on the furthest set of rails from the point of origin. A user who starts traversing the Crossing on the basis that the train has passed may then step out behind a train assuming that it is safe to do so, only to step in front of another train. External influences such as being in a hurry, wearing headphones or simply the noise of the train passing may also impact on the user's decision-making process to identify if another train is coming. This scenario accounts for 43% of the risk profile at Farnborough North and is effectively the largest single risk driver.

- **Misuse of the crossing**

The crossing at Farnborough North has a long history of misuse and near misses, which exacerbates its risk profile and accounts for 30% of the overall risk driver. Historic incidents have involved cyclists and pedestrians traversing the crossing without having had regard to the MSL warnings (*see page 5 of NWR Application Form and BBC News Article*).

Misuse at the crossing significantly reduced when level crossing attendants were introduced in December 2014. However, there were nevertheless nine incidences of deliberate misuse of the crossing between April 2014 and September 2022, most of which occurred during a period when the MSL was activated (to indicate that users should not cross the line). Incidents have been reported anecdotally by railway staff, train drivers and members of the public. As such, in Network Rail's view, it follows that the incidents of misuse reported are unlikely to be representative of the total number of misuse events that have actually occurred.

The likelihood of misuse combined with the risk of being struck by a second train accounts for a total of 73% of the overall risk driver. In Network Rail's view, these factors cannot be examined in isolation, because the way in which the crossing has been misused increases the risk of being struck by a second train.

Currently, the presence of MSLs and level crossing attendants reduces the risk somewhat, but in spite of that the crossing still ranks as the 4th riskiest on the Wessex Line. In the absence of level crossing attendants, the risk would be 90% higher. Despite the relevant mitigations having been implemented, the fact that the risk rating remains so high has led Network Rail to conclude that permanent closure is the only safe and viable option.

- **Train speeds**

Whilst the maximum line speed at the crossing is 70mph on both lines (for passenger and freight traffic), not all railway traffic will be travelling at this speed when it passes through Farnborough North due to various factors such as red signals, and trains accelerating and decelerating into and out of the station. According to Network Rail, this variation results in a variation to the waiting times at the crossing, as the timing on the MSL is set to allow the fastest service to approach safely. Slower services that are stopping at the station will extend that waiting time, causing frustration and potential misuse by those not prepared to wait for extended periods of time.

- **Vulnerable users**

Network Rail classifies ‘vulnerable users’ as those people whose ability to traverse the level crossing is impeded by one or more factors, including:

- Elderly
- Mobility impaired
- Visual and audio impaired
- Unaccompanied children
- People with prams/pushchairs
- Family groups with children
- Mounted cyclists
- Dog walkers
- People with fishing kit trolleys

In consideration of the fact that vulnerable users have certain characteristics which impede their ability to safely use a crossing (when compared with non-vulnerable users), Network Rail increases the time vulnerable users need to safely traverse the crossing by 50%. Any safety mitigations that are implemented on a crossing are based on this projected crossing time.

From the data collected at Farnborough North, Network Rail has observed regular use by large groups of school children, users encumbered by fishing trolleys and large shopping bags, and user wearing headphones (rendering them ‘audio impaired’).

- **Sighting Distances**

Network Rail reports that the sighting distance for approaching trains at Farnborough North does not comply with current minimum requirements. From the upside the ‘decision point’ (the point at which a user must decide whether it is safe to cross – a minimum of 2 metres from the nearest rail) is obscured by the level crossing attendant’s hut, which effectively moves the decision point to 1.2 metres from the nearest rail. From the downside the decision point is obscured by the MSL equipment and fencing, which forces the user to move to 1.5 metres from the rail.

Allowing for vulnerable users, Network Rail has calculated a minimum overall time of 12.62 seconds to safely cross the level crossing at Farnborough North. When crossing from both sides of the line, the sighting distance looking downline (south) does not provide adequate warning time (**Appendix 2, page 14, paragraph 2.7.3**).

Network Rail emphasises that *‘a user who misuses the Crossing despite the real risk of a second train coming, the MSL signal, and sighting obstructions faces a unique risk of a fatality. Commensurate to these risks, there is an unacceptable level of misuse which cannot reasonably be mitigated against save for complete closure of the Crossing.’*

- **Recorded daily use**

Network Rail carried out a survey of use between 20th and 28th March 2021. The average daily use within this timeframe was 1.863 pedestrians and 78 cyclists. A high proportion of these users were vulnerable, including the elderly, children (including those who were in a pushchair or pram, and some who were unaccompanied) and people with more than one dog on a lead. Some users were wearing headphones, rendering them 'audio impaired'. Given Network Rail's conclusions regarding sighting lines, it has concluded that permanent closure of the crossing is the only safe and viable option to completely eliminate risk.

- **Weather conditions**

Network Rail states that at certain times of the year, the glare from the sun can dazzle users when trying to locate trains approaching the crossing. This risk also applies to train drivers, who may struggle to identify a user crossing the tracks. Other weather conditions such as fog or heavy rain would similarly impair a user's sighting.

6. Consultation

Network Rail states that it has been consulting continuously on its proposals for Farnborough North since 2014, and as a result there is a high level of awareness of its proposals amongst local authorities, statutory consultees, local residents and the public at large. It has also organised several public meetings in Farnborough and Frimley. Although it was originally intended that its proposals would be progressed via the Transport and Works Act 1992, Network Rail states that the change of approach to apply under s118A does not materially impact the intended outcome or the merits of the proposal. Network Rail states that at no point during this period has any party raised any objection to the proposals.

Upon receipt of Network Rail's application, Hampshire County Council consulted with the following individuals and bodies (responses are included, where they have been received):

- **Open Spaces Society**

Made no comment to the informal consultation.

- **The Ramblers**

The Ramblers submitted an objection to the proposals via their local area representative (see attached). They asked the County Council to instead consider making a diversion order under section 119A to ensure that the crossing remained open until the replacement footbridge was built. They also asked the County Council to require a better designed bridge as the currently proposed design would force some users to rely on lifts within the station being functional at all times. In further submissions the Ramblers have raised concerns over the removal of the cycle gutters from the proposed bridge. In response to enquiries about this proposal Network Rail has stated that cycle gutters represent a trip hazard and that it is considered that the lifts are adequately sized to

accommodate cycles (1.6m or 5ft 3" square). The Ramblers disagree, and state that a medium-sized bicycle would not fit in the proposed lift parallel to the walls without the front wheel being turned at a 90 degree angle, which would likely mean only one or two cyclists could use the lift in one go.

- **The British Horse Society**

Made no comment but did state that they would defer to Cycling UK's views at this stage.

- **Byways and Bridleway Trust**

Made no comment to the informal consultation.

- **Rushmoor Cycle Forum and Cycling UK**

Cycling UK raised concerns that some users of the bridleway will have 'E-bikes', which are quite heavy and possibly too heavy to push up the cycle gutters that are proposed to be included on the new bridge, particularly those who are elderly. They also stated that there may be conflict between pedestrians and cyclists attempting to cross the footbridge using the cycle gutters. Further, the loss of bridleway status would mean that cyclists would no longer be legally able to use all of the route.

- **Rushmoor Borough Council**

Made no comment to the informal consultation.

- **Surrey County Council**

Surrey County Council are aware, but they are not actively progressing an application for Hatches Crossing.

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

7.1 Section 118A(1) of the 1980 Act sets out that before making an 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 a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up*".

7.2 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 misuse).

7.3 As noted above, the 1993 regulations make clear that when making its application, Network Rail should provide information to support its application, 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...". Network Rail has provided this information in its application form and in subsequent submissions to the County Council (**Appendix 2, page 34**).

7.4 In the case of the Farnborough North crossing, no accidents have occurred on or near the crossing, although Network Rail has recorded a number of incidents and near misses. One of these incidents occurred in May 2022, and was reported

in the national press (**see BBC News Article attached**). It involved a group of over 100 people, who had been queueing to use the crossing, still being in the process of crossing the line when the MSL switched from green to red and an audible signal being sounded to indicate a train was approaching the station. A potential accident was avoided only through the intervention of the crossing attendant and the actions of the driver of the train, who applied the emergency brake. The Rail Accident Investigation Board noted that despite additional warning lights and a crossing attendant having been provided at the crossing, the fact that users might not respond correctly when the audible alarm and warning lights were activated by an approaching train presented a residual risk.

7.5 The Ramblers response to the consultation objects to the proposal for an extinguishment to be progressed under s118A, citing concerns that the dedication of public rights over the new footbridge may not happen. In response to this, and in recognition of the fact that the new bridge is likely to be completed before a decision can be made as to whether the order should be confirmed, officers propose to progress a deed of dedication for public footpath rights over the newly constructed bridge. Completion of a draft deed will be a pre-requisite to either confirmation of the order as unopposed by the County Council, or submission of an opposed order to the Planning Inspectorate for determination (so that the deed can be taken into account by an Inspector when making their decision). This should ensure continuity between the provision of the new bridge and the extinguishment of the crossing. Authority to enter into such an agreement will be sought under the cover of a separate report.

7.6 Concerns have also been raised by the Ramblers regarding the suitability of the alternative route over the footbridge, and how easily it may be accessed by users of varying ability. Whilst this would be a consideration at confirmation stage, it is not relevant to the legal test for making an order under Section 118A(1). That notwithstanding, Network Rail asserts that the proposed bridge fulfils its obligations under the Equality Act 2010 (**Appendix 2, pages 31 & 32**).

7.7 In consideration of whether it is expedient to make the order in the interests of safety, officers consider that Network Rail has provided clear evidence that the crossing is heavily used by a large number of vulnerable users and that, despite its attempt to mitigate safety issues at Farnborough North, there remains a residual risk to users of the crossing (as illustrated by the incident in May 2022).

7.8 Officers consider that, having considered the available information, the requirements of s118A (1) HA 1980 have been met, and that it is expedient in the interests of the safety of members of the public using the crossing, that it should be stopped up.

8. Further Information

8.1 If a Rail Crossing Extinguishment Order is opposed, then it must be submitted to the Secretary of State for determination (by way of an exchange of written representations, a public hearing or public inquiry). In such an event, it is considered that the County Council should adopt a neutral stance and defer to Network Rail to promote the case for confirmation to the Secretary of State.

8.2 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. In such an event, officers will prepare a fresh report recommending whether or not to confirm the order, in consideration of whether the relevant legal tests have been met. This report can be presented either to the Regulatory Committee or to senior officers under delegated powers.

8.3 The primary focus at 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.

8.4 The 1993 regulations require that an applicant demonstrates that consideration has been given to what other steps might be taken to “remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing.” Network Rail has provided this information, and if necessary, the options it has explored can be considered in the event that the Order is capable of being confirmed by Hampshire County Council, following the advertisement of the made order.

9. Recommendations

9.1 That authority be given for a Rail Crossing Extinguishment Order be made to extinguish that part of Rushmoor Bridleway 24 shows between points A and B on the attached plan.

9.2 In the event that such an Order is made and is opposed, that the Order be referred to the Secretary of State for determination, with the County Council adopting a neutral stance.

9.3 In the event that such an Order is made and is *not* opposed, that a fresh report is prepared recommending whether or not to confirm the Order.

**Approved by: Jonathan Woods Strategic Manager
Countryside**

Date: 04 April 2024

On behalf of the Director of Universal Services

IMPACT ASSESSMENTS:

1. Equality Duty

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. Equalities Impact Assessment:

The proposal may have an impact on some vulnerable users, who will be affected by the proposed extinguishment of the at grade crossing and replacement by a stepped bridge. Network Rail states that the bridge will be built in accordance with British Standard gradients with steps available for the more able-bodied, and that by providing lifts it will be complying with the Equalities Act ethos of not reducing access but enhancing where possible. Network Rail states that it would satisfy the diversity and inclusion report by preserving access for all. No other impacts on equality or diversity are anticipated. However, the question as to suitability of the bridge as an alternative route will be considered at confirmation stage and therefore does not fall within the scope of this decision.

2. Impact on Crime and Disorder:

The proposal may reduce crime and disorder in the area, although access to the railway could be gained at other nearby locations, or even created by illegal access.

3. Climate Change:

The proposal is unlikely to have any significant environmental impact.