

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	22 March 2017
Title:	Confirmation of a Rail Crossing Diversion Order for part of Chandlers Ford Footpath 707b
Reference:	8194
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

1. Executive Summary

- 1.1. The purpose of this paper is to consider whether to confirm an order to divert part of Chandlers Ford Footpath 707b (“Footpath 707b”) at a point where it crosses a railway line approximately 200 metres north of Chandlers Ford station. If confirmed the order, which is sought by Network Rail in the interests of the safety of members of the public, will divert the public footpath away from the ‘at grade’ crossing and onto a stepped pedestrian bridge. Members visited the site on 9 January 2017 to inspect the crossing, and the new bridge (which has already been constructed).
- 1.2. Members considered the application for the making of an order under Section 119A of the Highways Act 1980 at the Regulatory Committee meeting on 25 January 2017, and directed that the order should be made, on the grounds that it was “*expedient in the interests of the safety of members of the public using it or likely to use it*”.
- 1.3. At the January meeting, officers advised Members that, in the event that no objections were received in respect of the order, a different legal test had to be considered before the order could be confirmed. It was therefore recommended that, in the event that the order was not opposed during the statutory consultation period, the matter should be returned to the Regulatory Committee so that Members could first consider the test for confirming the order. Members also approved this recommendation.
- 1.4. The order was subsequently made on 7 February 2017, and notification was served on statutory consultees and advertised online, on site and in the local press on 10 February 2017 for a period of 28 days. During the ensuing statutory consultation period, no objections were received, and so it is now open to Hampshire County Council (HCC) to confirm the order as unopposed.
- 1.5. The grounds for *confirming* an Order, as set out in section 119A(4) of the 1980 Act differ from those concerning the *making* of an Order, and require that

consideration is given to whether it is reasonably practicable for the existing crossing to be made safe for public use. Consideration must also be given to Section 149 of the Equality Act 2010, which imposes a general duty for public authorities to have due regard to the need to eliminate conduct prohibited under the 2010 Act, specifically advancing equality of opportunity.

- 1.6. Prior to the January 2017 meeting, officers consulted key stakeholders on the proposal, and whilst this did not result in any opposition to the route being diverted, some responses questioned whether the proposed diversion route would have a detrimental effect on users with mobility issues. Network Rail provided an assessment setting out its reasons for seeking the diversion with its initial application, and some of the issues raised during the consultation are addressed in its original submission.
- 1.7. Much of the information contained in this report was set out in the report to the January 2017 meeting. As it remains relevant to the question of confirmation of the order, it is repeated here for the sake of completeness.

2. Legal framework for the decision

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

2.1. Subsection 4 of Section 119A states that:

- (4) *The Secretary of State shall not confirm a rail crossing diversion 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 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.*

Other Legislation / Government Reporting

2.2. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 set out a 'Form of Request', 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.
 - (vii) the safety of the alternative right of way to be created by the order relative to the existing rail crossing.
- 2.3. Network Rail'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.
- 2.4. On 7th March 2014 the House of Commons Transport Committee (HOCTC) published a report on safety at level crossings. The report stated 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. The HOCTC identified that Network Rail has been able to improve safety by closing level crossings, but further improvements may be progressively more difficult to achieve.
- 2.5. 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 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.
- 2.6. 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:
- 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.

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 in this instance is Network Rail, which owns all of the land affected by this proposal.

4. The Existing Route and surrounding area

- 4.1. Network Rail had already programmed the work to construct the new bridge by the time this application was submitted to the County Council, and so took the decision not to wait for a formal diversion of the crossing before constructing the alternative route (Network Rail was made aware at the time that if the application was unsuccessful, the current line of FP 707b would need to remain open for use). For this reason, the character of the route described at 4.3 is no longer in evidence on the ground, but it is nevertheless relevant to Members' decision (see Appendix 1 for photographs showing a 'before and after' comparison).
- 4.2. Footpath 707b is situated approximately 200 metres to the north of Chandlers Ford station. It is about 140 metres in length, and forms a pedestrian link between the Valley Park estate and Chandlers Ford. The section that is the subject of this application is approximately 22 metres in length.
- 4.3. The section to be diverted commences at the junction with Sutherlands Way (Point A on the Committee Plan) and terminates on the south side of the line (Point B). The proposed diversion would route the path over a new footbridge via Points C and D. Previously, when approaching the crossing from the east (Point A), users had to negotiate a stile and three shallow steps, followed by two steeper steps which took them up to the trackside. The crossing itself is approximately six metres in length, running over solid wooden boards to meet steep timber steps on the western side of the track bed (these steps were installed relatively recently, presumably as an 'ad hoc' improvement). The path then crossed another stile before proceeding along an earth path to a one metre wide stepped wooden footbridge crossing Monks Brook. Thereafter the path proceeds westward to meet a surfaced path running around the perimeter of the Valley Park estate. Signs with the wording "Stop, Look, Listen - Beware of Trains", which were displayed on each side of the track, can be seen at Appendix 1. Other than the aforementioned stiles, prior to Network Rail's works there were no barriers restricting access onto the line.
- 4.4. Footpath 707b provides an important link between the communities of Chandlers Ford and Valley Park, affording access to local shops and the local surgery, and it is also used by children travelling to and from local schools. The nearest alternative access across the railway line is the B3043 Bournemouth Road, situated on the south side of Chandlers Ford station (approximately 430 metres south-east of Footpath 707b). The nearest crossing point to the north is provided by a footbridge forming part of Chandlers Ford Footpath 6, which lies 830 metres to the north-west. Information provided by Network Rail indicates that whilst open, the crossing was well-used (approximately 130 pedestrians and cyclists per day).

5. The Grounds for Making the Order

- 5.1. Network Rail has established processes for judging whether proposed risk reduction or mitigation measures at level crossings are 'reasonably practicable'.

These include risk assessment, as well as the assessment of potential risk reduction measures (mitigations). The process requires calculation of the risk for an individual level crossing using a computer model, known as the All Level Crossings Risk Model (ALCRM), and the consideration of other factors which may influence the risk at the crossing. Using the Rail Safety Standards Board (RSSB) guidance to identify possible measures that can be taken to mitigate or eliminate the risk, Network Rail then applies a cost-benefit analysis to specific risk mitigation measures.

- 5.2. Where the safety benefit from a proposed mitigation exceeds the cost of its implementation (based on the cost-benefit analysis), Network Rail deems that this is sufficient justification to proceed with the proposed measure. This is consistent with the legal obligation to minimise risk as far as 'reasonably practicable', as outlined in RSSB guidance on safety decision-making.

Other factors to be considered are:

- a) the occurrence of accidents, reports of misuse and near misses at the crossing;
 - b) the potential consequences of an accident at the crossing; and
 - c) other business benefits of the proposed risk reduction measure.
- 5.3. Network Rail uses ALCRM to measure 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. Collective risk is reported by ALCRM 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 Chandlers Ford crossing is C4, representing a high individual risk (C). The route carries a low collective risk (4), a reflection of the fact that the likelihood of a pedestrian causing collective injury at the crossing is minimal.
- 5.4. Using the ALCRM risk score (and other information including numbers of train movements and levels of misuse), Network Rail ranks crossings on their network. The higher the ranking the higher priority is given by Network Rail. Using this system, Chandlers Ford footpath crossing ranks 10th highest out of 172 footpath crossings on the Wessex Route, and 66th highest risk out of all 346 level crossings on the Wessex Route (Network Rail has advised that using *all* crossing figures to compare footpath crossings with road crossings is not helpful, as the risk score of a road crossing will generally be higher, including as it does the risk of derailment to a train caused by vehicle incursion). Chandlers Ford level crossing has been identified as a high risk footpath crossing on the Wessex Route due to the fact that it is a passive crossing with no protection other than users obeying the signage, a risk exacerbated by the number and speed of trains that pass through the crossing and the number of users traversing the crossing. Network Rail's narrative risk assessment is included in Appendix 3.
- 5.5. Network Rail has identified the following reasons for seeking the diversion at Chandlers Ford:
- (a) The access to the line at this point has a history of trespass and/or misuse, and 'near miss' events.

- (b) A large number of users (133 counted during a 24 hour period during school holidays), with a high proportion of use dusk/evening use by runners and dog walkers.
 - (c) A high proportion of use by 'vulnerable users' (cyclists carrying bikes, children and elderly users), thus increasing the average 'traverse time' specified in Network Rail's risk assessment.
 - (d) The proximity of Chandlers Ford station to the crossing results in a speed differential between trains leaving or passing through the station, which may create a false perception of risk amongst users.
- 5.6. The risk assessment cites a number of recently reported incidents of misuse at the Chandlers Ford crossing. These are:
- 12th March 2014 – Near Miss – 19.07 from Romsey to Salisbury reported near miss with male and young child.
 - 14th April 2014 – Trespass - 12.30 from Cardiff Central to Portsmouth Harbour reported four youths standing on the crossing .
 - 24th August 2014 - Trespass - two males reported trespassing and hiding in bushes.
 - 11th July 2015 – Near Miss - 17:56 from Salisbury to Romsey reported near miss with two girls crossing track in front of the train.
 - 11th October 2015 - Hampshire Police reported two males lying on the track.

6. Consultation

6.1. The following individuals and bodies were consulted on the application prior to the January 2017 meeting (responses are included, where received):

6.2. Open Spaces Society

No objection.

6.3. The Ramblers

No objection.

6.4. Eastleigh Borough Council

Supports the application. It states that:

"We have discussed the possibility of making the footbridge DDA compliant, however due to the required height of the bridge and the gradients either side it would need to have ramps of around 125m either side, something that would be huge and I'm sure very unpopular with neighbours. Adding to this, as the access across the level crossing is not currently DDA compliant (there are stiles and steps) therefore there is no requirement for the new footbridge to be made to DDA standards.

Issues of the footbridge overlooking properties on Sutherlands Way and the need for adequate lighting on the footbridge have already been discussed with Network Rail and we believe that the plans have addressed these concerns.”

6.5 Chandlers Ford Parish Council

“Whilst the Council welcome improvements to safety at foot crossings over the railways, they feel that there has been inadequate investigation into the alternatives to a footbridge that would be of benefit to the very young, elderly and infirm that currently use the crossing. It is the belief of the Parish Council that the option of a subway has not been fully explored and thus, for reasons of accessibility, the current Right of Way should remain in place until such time as the accessibility issues are properly resolved.”

6.6 Valley Park Parish Council

Supports the application.

Members may recall the observations of Councillor Alan Dowden at the meeting of 25 January 2017 on behalf of the parish council, in which he confirmed that residents favoured the idea of a bridge over a tunnel, as the latter may encourage anti-social behaviour. Councillor Dowden also confirmed that he supported the application.

7. Section 119A(4): Consideration of the confirmation of the Order

- 7.1. Section 119A(4)a of the 1980 Act sets out that, before confirming an Order, a council must consider *“whether it is reasonably practicable to make the crossing safe for use by the public”*, having had regard to *‘all the circumstances’*. In the case of the Chandlers Ford crossing, it follows that HCC must be satisfied that there were no other ‘reasonably practicable’ measures that Network Rail could have taken to make the crossing safe, thus obviating the need to divert it over the bridge.
- 7.2. Guidance in the Planning Inspectorate’s Circular 1/09, paragraph 5.51, states that a new way created as a result of Section 119A order *“should be reasonably convenient to the public and authorities should have regard to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion.”*
- 7.3. Network Rail has a duty to manage public money effectively and responsibly, and so has considered a number of measures that might have made the crossing safer. The following options for improving safety at Chandlers Ford crossing were set out in its July 2014 Risk Assessment (Appendix 3), including those set out in the table below.

Option considered by Network Rail	Network Rail comments
Miniature Signal Lights (estimated cost - £300k)	No cost/benefit ratio to proceed with this option
Ramped Footbridge (approx cost – £2.5m-£3m)	There are significant space constraints on the site, and fitting a 1:20 ramped structure onto the site would be unfeasible. The structure would be visually intrusive for the local residents and would result in significant loss of privacy.
Subway/Tunnel (approx cost – £76k-£160k per sqm)	Not suitable due to the long timescales, and the disruption it would cause to service provision. Subways often attract antisocial behaviour (vandalism, graffiti), and discourages usage at night time. Unsuitable due to the lack of land available adjacent to the level crossing. High maintenance when compared with footbridges, and at high risk of flooding given proximity of river.
Stepped Footbridge with Lift (approx. cost £3m-£4m)	Unsuitable because the level crossing is not at a manned station and lifts cannot be monitored. There is an operational risk of entrapment and in an event of failure there will be no alternative crossing for wheelchairs and bicycles. Not a safe option.
Closure with diversion	Diversion onto pre-existing route not possible as nearest alternative route is too far from the crossing point.

7.4. From the above table, it can be seen that a number of options have been considered at this crossing. A subway is not considered to be feasible, given the maintenance implications and the land available at the crossing (there are also valid concerns about flooding from Monks Brook). Similarly, the area required to accommodate a ramped footbridge (or footbridge incorporating a lift) also appears to rule this option out at Chandlers Ford - the photographs below give an indication of the size of such a structure.



7.5. Other measures, such as the installation of Miniature Stop Lights (MSL), would represent a cheaper option. MSLs issue both a visual and audible warning triggered automatically by an approaching train, at least five seconds longer than the time which has been calculated as necessary for users to be able to cross

- 7.6. the railway. Consequently, this measure is reliant on the public using the crossing correctly. However, as part of recent research carried out on behalf of the RSSB, a survey of crossing users found that 29% would consider ignoring a red light, principally if there was no train visible and/or they were in a hurry¹. In the survey, all of the crossing users who said they would consider doing this were found to understand the meaning of the red light, but it was also apparent that they underestimated the length of time it would take them to traverse the crossing. These findings are borne out by a number of recent RSSB reports into fatal accidents at level crossings, which attribute accidents to misuse by users.

The information above appears to support Network Rail's reservations regarding the suitability of MSLs as a mitigating safety measure, which was ultimately rejected as an option at the Chandlers Ford crossing, presumably due to the high volume of 'vulnerable users' and the reported incidents of misuse in recent years (see 5.6).

- 7.7. Based upon the findings of its risk assessment and subsequent cost/benefit analysis, Network Rail concluded that the appropriate action to be taken at the Chandlers Ford crossing would be for the installation of a stepped footbridge.
- 7.8. During the initial consultation on the application, concerns were raised by Chandlers Ford Parish Council regarding the suitability of the proposed bridge, and how easily it might be accessed by users of varying ability. It is accepted that the crossing may now be more difficult to negotiate for some users, but it could be argued that this is an acceptable trade off against the complete removal of risk from the railway line. It should also be noted that, although the introduction of the footbridge may prove challenging for some users, prior to its installation the Chandlers Ford crossing included stiles and steps on both sides of the line. It is arguable that the presence of this 'furniture' (as well as a stepped bridge over Monks Brook further along Footpath 707b, which is still in situ) already had this impact on users with mobility issues, and so therefore the installation of a footbridge over the railway line (whilst replacing the stiles and steps with a sealed, ramped surface) could be seen as having a neutral impact.

8. Further Information

- 8.1. Under section 119A(6), the County Council has required Network Rail to maintain all of the new route created by the order.
- 8.2. The County Council has also required Network Rail to enter into an agreement to defray part or all of any compensation that may be payable, together with any expenses reasonably incurred in connection with the erection and maintenance of barriers and sign (or in creating the new route), under the provisions of Section 119A(8).
- 8.3. Under section 119A(4)b, upon confirmation of a rail crossing diversion order, Network Rail must ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted. As Members will be aware (and as shown in the photographs at Appendix 1), Network Rail already installed permanent fencing when the bridge was installed.

¹RSSB report – "Human factors risk at user worked crossings (T269)" - 2004

9. Conclusions

- 9.1. In reaching a conclusion as to whether to recommend that the order is confirmed, officers have had regard to the information provided by Network Rail in its application, and to literature published by the RSSB, ORR and HOCTC.
- 9.2. Network Rail's submissions are underpinned by its risk assessment using the ALCRM model (the use of which is endorsed by the ORR and RSSB). This assessment supports its view that there is an 'unacceptable level of risk' at the Chandlers Ford crossing.
- 9.3. Other options considered to improve safety at the crossing have either been considered undeliverable (due to the lack of available land and considerable maintenance implications), or as delivering a limited improvement to public safety which would not adequately address the current issues.
- 9.4. On balance, officers consider that, having had regard to all the circumstances, there was nothing 'reasonably practicable' that Network Rail could have done to make the crossing safer, other than by the installation of a stepped footbridge. The lack of objection to the diversion order by local residents also indicates an acceptance of the new structure, which has now been in regular use for approximately two months.

10. Recommendations

- 10.1. That the Rail Crossing Diversion Order to divert Chandlers Ford Footpath 707b (as shown between points A and B on the Committee Plan) should be confirmed.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

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

OR

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.

Section 100 D - Local Government Act 1972 - background documents

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.)

DocumentLocation

General Correspondence

Hantsfile Reference: Orders by
Parish\Chandlers FordPPO Proposal File: Chandlers Ford
Footpath 707bCountryside Access Team,
Countryside Service, Castle Avenue,
Winchester, SO23 8UL

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.

Equalities Impact Assessment:

The proposal may have an impact on equality in the area, but it is considered that the impact is mitigated by the fact that the crossing in question was not easily used by people with mobility issues.

2. Impact on Crime and Disorder:

The proposal is likely to reduce crime and disorder in the area, as it is removing public access from the railway line at this location.

3. Climate Change:

The proposal does not have any significant environmental impact.