

HAMPSHIRE COUNTY COUNCIL

Officer Decision Record

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| Decision Maker: | Jonathan Woods Countryside Strategic Manager |
| Date: | 31 March 2025 |
| Title: | Application for Rail Crossing Diversion and Extinguishment Orders Binsted Footpaths 38, 44 and 55 |
| Reference: | PPO 5170 |

1. The decision:

- That the application for a rail crossing extinguishment order should be accepted and authority given for an order to be made to extinguish that part of Binsted Footpath 55 running between Points J and K on the Location Map, under the provisions of Section 118A of the Highways Act 1980.
- That the application for a rail crossing diversion order should be accepted and authority given for an order to be made to divert parts of Binsted Footpaths 38 and 44, as shown running between Points F and G, and A, G and H on the Location Map.
- That the diversion routes created between Points A to E and A to F on the location map under Section 119A shall be 2 metres wide, with pedestrian gates at SU 7926 4308 and SU 7922 4308 on either side of the railway line.
- That the Order made under Section 119A should require Network Rail to maintain all parts of the footpath created by the order.
- That the Orders be confirmed as unopposed if no objections or representations are received, on the basis that the Council is satisfied that the relevant legal tests are met; and that if objections or representations to the Order are received to either/both Order(s) that it/they be submitted to the Secretary of State on the understanding that Network Rail promotes the Orders at any hearing or inquiry that may be held, with the County Council adopting a neutral stance.

2. Reason(s) for the decision:

This report considers two applications made by Network Rail ('NR') in April 2022 under Sections 118A and 119A of the Highways Act 1980, to extinguish part of Binsted Footpath 55, and to divert parts of Binsted Footpath 38 and 44, at (and immediately adjacent to) Bentley Station. The applications have been made in the interests of public safety.

Having considered the applications and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds for the requested Orders to be made.

3. Other options considered and rejected:

N/A

4. Conflicts of interest:

None

5. Dispensation granted by the Head of Paid Service:

N/A

6. Supporting information:

- Officer Report
- Appendix 1
- Location plan

Approved by:

Date: 31 March 2025

Jonathan Woods – Countryside Strategic Manager

On behalf of the Director of Universal Services

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

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.)

| <u>Document</u> | <u>Location</u> |
|--|--|
| Application Reference: PPO 5170 Parish of Binsted | <i>Countryside Access Team Universal Services The Castle Winchester Hampshire SO23 8UD</i> |

IMPACT ASSESSMENTS:

1 **Equalities Impact Assessment: N/A**

2. **Impact on Crime and Disorder: N/A**

3. **Climate Change:**

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

Hampshire County Council declared a climate change emergency on 17 June 2019 and a Climate Change Strategy and Action Plan has since been adopted. The County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Councils climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

The legislative framework for Public Path Orders does not enable the decision maker to take into account any environmental concerns relating to an application and a climate change impact assessment has therefore not been carried out in relation to this application. The Countryside Access Team strives to reduce their environmental impact wherever possible.

HAMPSHIRE COUNTY COUNCIL

Decision Report

| | |
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| Decision Maker: | Jonathan Woods Countryside Strategic Manager |
| Date: | 31 March 2025 |
| Title: | Application for Rail Crossing Diversion and Extinguishment Orders Binsted Footpaths 38, 44 and 55 |
| Reference | PPO 5170 |

Contact name: Tara Potheary – Countryside Access Development Officer

Email: tara.potheary@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to assist the Countryside Strategic Manager in determining whether to accept two applications from Network Rail to extinguish and divert public rights of way crossing a railway line at Bentley Station, in the parish of Binsted (Footpaths 38, 44 and 55).

Recommendation(s)

2. That the application for a rail crossing extinguishment order should be accepted and authority given for an order to be made to extinguish that part of Binsted Footpath 55 running between Points J and K on the Location Map, under the provisions of Section 118A of the Highways Act 1980.
3. That the application for a rail crossing diversion order should be accepted and authority given for an order to be made to divert parts of Binsted Footpaths 38 and 44, as shown running between Points F and G, and A, G and H on the Location Map.
4. That the diversion routes created between Points A to E and A to F on the location map under Section 119A shall be 2 metres wide, with pedestrian gates at SU 7926 4308 and SU 7922 4308 on either side of the platform.
5. That the Order made under Section 119A should require Network Rail to maintain all parts of the footpath created by the order.
6. That the Orders be confirmed as unopposed if no objections or representations are received, on the basis that the Council is satisfied that the relevant legal tests are met; and that if objections or representations to the Order are received to either/both Order(s) that it/they be submitted to the Secretary of State on the understanding that Network Rail promotes the Orders at any hearing or inquiry that may be held, with the County Council adopting a neutral stance.

Executive Summary

7. This report considers two applications made by Network Rail ('NR') in April 2022 under Sections 118A and 119A of the Highways Act 1980, to extinguish part of Binsted Footpath 55, and to divert parts of Binsted Footpath 38 and 44, at (and immediately adjacent to) Bentley Station. The applications have been made in the interests of public safety.
8. Having considered the applications and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds for the requested Orders to be made.

Legal framework for the decision

HIGHWAYS ACT 1980 - Section 118A: Stopping up of footpaths, bridleways and restricted byways crossing railways (PART)

- (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) 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".
- (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;

HIGHWAYS ACT 1980 - Section 119A: Diversion of footpaths, bridleways and restricted byways crossing railways (PART)

- (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 diverted (whether on to land of the same or of another owner, lessee or occupier).

- (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—
 - (a) create, as from such date as may be specified in the order, any such new path or way as appears to the council requisite for effecting the diversion, and
 - (b) extinguish, as from such date as may be specified in the order or determined under subsection (7) below, the public right of way over the crossing and over so much of the path or way of which the crossing forms part as appears to the council requisite as aforesaid.
- (3) An order under this section is referred to in this Act as a “rail crossing diversion order”.
- (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 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) A rail crossing diversion order shall not alter a point of termination of a path or way diverted under the order—
 - (a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or
 - (b) (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it.
- (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath, bridleway or restricted byway created by the order.
- (7) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall—
 - (a) specify a date under subsection (2)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (8) Before determining to make a rail crossing diversion 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,—
 - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below;
 - (b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;
 - (c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use by the public;

(d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below.

RAIL CROSSING EXTINGUISHMENT AND DIVERSION ORDERS REGULATIONS 1993

The 1993 Regulations set out a 'Form of Request' for a diversion, which requires applicants to provide information relating to:

- (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.

Section 29: Duty to have regard to agriculture, forestry and nature conservation (applied to section 118A and s119A by section 121)

- (1) In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils to have due regard to -
 - (a) the needs of agriculture and forestry, and
 - (b) the desirability of conserving flora, fauna and geological and physiographical features.

(1) In this section, "agriculture" includes the breeding or keeping of horses.

Section 120: Exercise of powers of making public path extinguishment and diversion orders

- (2) The powers of making orders under sections 118 to 119D above are not exercisable by a council -
 - (a) with respect to any part of a highway which is within their area, without prior consultation with any other council in whose area that part of the highway is situated;
 - (b) with respect to any part of a highway which is outside their area, without the consent of every council in whose area it is; and
 - (c) with respect to any part of a highway in a National Park, without prior consultation with Natural England (if the National Park is in England)...

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

5 National Parks

- (1) The provisions of this Part of this Act shall have effect for the purpose-
- (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
 - (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

11A Duty of certain bodies and persons in relation to the purposes for which National Parks are designated

(1a) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

HOUSE OF COMMONS TRANSPORT COMMITTEE REPORT – SAFETY AT LEVEL CROSSINGS

On 7th March 2014 the House of Commons Transport Committee (“HOCTC”) published a report on safety at level crossings¹. It identified significant safety risks, with level crossings representing half of the non-suicide, non-trespass fatality risk on the railway. The report stated that the aim should be to eliminate accidental deaths at level crossings, with a recommendation that the Office of Rail Regulation (“ORR”) adopted an explicit target of zero fatalities at level crossings from 2020.

The HOCTC report referred to the Law Commission’s recognition that decisions about level crossings involve striking a balance between public safety, and the convenience to communities in being able to cross a railway. 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); the 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.

Description of the existing routes and proposed diversion route(s)

See Location Map at Appendix 1

9. Footpath 44 commences at a junction of Station Road and Bentley Station car park at Point H and proceeds eastwards across the station car park and through vegetation bordering several parking spaces to Point G. It then proceeds through a self-closing pedestrian wicket gate and continues diagonally, eastwards across the railway line to Point A, just beyond the eastern edge of the station platform.

¹ <https://committees.parliament.uk/work/4854/safety-at-level-crossings/publications>

10. Footpath 38 commences at a junction with Footpath 44 at Point G and proceeds southwards, cutting diagonally across both platforms at Bentley Station and the railway line to Point F.
11. It should be noted that, in practice, neither the definitive line of Footpath 38 nor 44 has been in public use for a number of years. The current configuration of Alice Holt crossing runs between B-C over timber decking 8.7 metres in length and 2.4 metres in width, perpendicular to the rails. Based on available aerial photography, this arrangement has been in situ since at least 2000, and NR's application seeks to formalise this route as the public right of way.
12. Footpath 55 commences at a junction with Station Road, Binsted Footpath 38 and Binsted Footpath 56 at Point K. Proceeding south-eastwards through an area of woodland for approximately 55 metres, it crosses the railway via a level crossing (referred to by NR as 'Buckthorne Oak' crossing) and continues for a further 25 metres to a junction with Binsted Footpath 44 at Point J. It is proposed that the entire length of the path running between K-J is extinguished to avoid the creation of a cul-de-sac right of way on both sides of the railway.
13. Work has already been carried out by NR to consolidate the Alice Holt crossing so that there is now a single crossing point. NR seeks to regularise the position on the Definitive Map by recording public rights on this new alignment (G-C-B-A), with existing gates at SU 7926 4308 and SU 7922 4308 in situ. It is also proposed that as part of the diversion, that part of the path that runs between G-H is altered slightly to move it away from dense vegetation and parked cars (onto C-D-E). A further realignment south of the railway line is also proposed to ensure that the link between Footpaths 38 and 44 is not severed (A-B-F).

Issues to be decided

14. Before making an order under section 118A or section 119A, the County Council must be satisfied that it is expedient in the interests of public safety that the right of way should be stopped up or diverted. In its capacity as operator of the railway, the onus is on NR to demonstrate the need for making the Order. Applications must be accompanied by information relating to existing use of the path and an assessment of the safety issues that warrant the making of the Order.
15. DEFRA guidance² emphasises the need to ensure that orders made under section 118A do not create a cul-de-sac that would encourage trespass on the railway, and highlights the provisions within section 118A(2) to extend the scope of an order to include sections of a path that extend from a crossing to an intersection with another highway.
16. Further tests set out in sections 118A(4) and 119A(4) are applied at confirmation stage. These require the confirming authority (whether that be the County Council or the Secretary of State) to be satisfied that it is expedient to confirm the order having regard to 'all the circumstances'. In particular, consideration must be given to whether, apart from the order, it would have been reasonably practicable for the rail operator to have made the crossing safe for the public, and what arrangements have been made to ensure that appropriate barriers and signs are erected and maintained once the existing right of way is extinguished. Other relevant factors include the use currently made of the existing path (and the risk to the public if

² DEFRA Rights of Way Circular 1/09, paragraph 5.48

such use were to continue), the effect that the loss of the path would have on users of the public rights of way network as a whole, and the opportunity for taking alternative measures to deal with the problem, such as a diversion order or a bridge or tunnel, and the relative cost of such alternative measures. These 'confirmation tests' are also considered in this report, to allow for scenarios where the County Council may itself be the determining authority at confirmation stage.

17. The termination point of the proposed diversion under section 119A must either terminate at a point on the same highway, or a highway connected with it. The termination points of a right of way which does not already terminate on a highway of at least equal status may not be altered under section 119A.
18. Although not expressly set out in section 119A, DEFRA's view³ is that the diverted route should be reasonably convenient to the public, and consideration should also be given to the effect that the proposal will have on both the land served by the existing path, and over which the new path is to be created. Consideration should also be given to the effect that the diverted right of way will have on the wider network, as well as the safety of the diversion route, particularly where it passes along or across a vehicular highway.
19. Section 119A(6) provides for the order-making authority to require the operator to maintain all or part of the way created by the Order. Section 119A(8) further provides for the authority to require the operator 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 signs or in making up the new way. In the event that the order is confirmed, the operator must ensure that suitable fencing is erected to prevent public access to the railway, and that appropriate signage is erected.
20. If an Order is made under section 119A, then the width of the diverted route, together with any limitations to use that are to be included must also be recorded. Authority for the inclusion of those particulars in the Order to change the definitive map and statement should also be given.
21. Where a rail crossing order is made, the statutory process allows for objections to be made in response. In these circumstances, the County Council cannot itself confirm the Order, and it would need to be referred to the Secretary of State for determination. In such instances, the County Council's default position will be to defer to NR to promote the Order at any resulting hearing or inquiry, it being better placed than the County Council to present the relevant technical and safety arguments. Alternatively, if upon a review of the objections and any additional evidence it considers it can no longer support the Order, the County Council may decide not to refer the matter to the Secretary of State and instead rescind the Order.

Background to the Application

22. Both applications were submitted in April 2022 by Network Rail. Initially it was NR's intention that both crossings should be consolidated into one stepped bridge (which was to include a lift) that was to be constructed within the footprint of Bentley Station, and the County Council consulted on this basis in February 2023.

³ DEFRA Rights of Way Circular 1/09, paragraph 5.51

The proposal met with a significant level of opposition from local residents and user groups, on account of the intrusion that would result from a stepped bridge and accessibility issues that would result from the introduction of steps. Subsequently NR returned with the revised applications that are the subject of this report.

23. NR uses a model known as the All Level Crossing Risk Model (“ALCRM”) to assess risk at level crossings. This generates two risk scores⁴. The highest risk crossings are those which score A, B or C for individual risk and 1, 2 or 3 for collective risk.
24. 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 to the crossing.
25. Because the application to divert Footpaths 38 and 44 would not result in the removal of a right of way from the railway line, and instead simply seeks to modify the definitive line of the paths so that they align with the current at-grade crossing, the ALCRM model is of little relevance in assessing whether the path should be diverted. It is, however, relevant to assessing the case for removing Footpath 55 (the Buckthorne Oak crossing).
26. The ALCRM model takes account of line speed, the total crossing distance, and the required and actual sighting distances at the crossing (the distance at which an approaching train can be seen).
27. NR’s narrative risk assessment for Buckthorne Oak is included at Appendix 1. This highlighted issues such as current usage, obstructions caused by weather conditions, railway traffic and sighting distance. Some of these themes are explored further below.
28. A motion sensor camera census was carried out in 8th and 11th August 2018. This census revealed that there was an average of 7 pedestrians using the crossing per day. A further census was carried out between 4th and 12th November 2020, and this revealed that the average daily usage had more than doubled since 2018, with an average of 15 users per day.
29. NR’s calculations have resulted in a required sighting distance of 7.99 seconds for the Buckthorne Oak crossing. Sighting calculations are based on the maximum attainable train speed, which in this case is 70mph. NR states that a sighting distance of 281 metres is required for a user to safely traverse the crossing, but on the ‘Upside’ of the line, the available sighting distance is inadequate when looking in both directions (202 and 144 metres, the latter giving a user only half the warning time required).
30. In particular, NR has highlighted concerns relating to the length of the platform at Bentley Station. Due to the short length of the platform, several stopping services travelling in the down direction (using both the up and down lines) overhang both the station and the Alice Holt level crossing, resulting in trains either falling just short or overhanging the Buckthorne Oak level crossing. This results in users of

⁴ 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 crossings which are temporarily closed.

the Buckthorne Oak crossing having a limited view when stood at the downside crossing decision point and unable to see if a train is approaching on the other line. In this scenario the user is reliant on the whistle boards as warning of an approaching train on the upside. This issue is illustrated in the photos included in Appendix 1.

31. On 5th October 2016 a mobility scooter was struck by a train while using the Alice Holt crossing at Bentley Station, fatally injuring the scooter user. The subsequent report of Rail Accident Investigation Branch⁵ ('RAIB') recommended that NR make improvements at the crossing, including adjustments to the height of fencing and the width of the path leading up to the crossing, as well as a modification of NR's level crossing management processes so as to consider mobility scooter use at all crossing that rely on users looking and listening for trains. Although the proposals for the Alice Holt crossing are minor in nature, and won't remove at-grade public access, officers have found the RAIB report instructive when considering the proposals for the Buckthorne Oak crossing. Allowing for minor variations between the two crossings (e.g. available sighting distances) lines, given that the Buckthorne Oak crossing is situated only 115 metres north-east of the Alice Holt crossing, comments in the report relating to the effect of sun glare, wind speed/direction and the volume of use by vulnerable users at the Alice Holt crossing (including people with dogs and cyclists) have helped officers contextualise NR's applications.

Consultations

32. As discussed above, the County Council received numerous responses to the initial consultation relating to the stepped bridge proposal. The same consultees were consulted on the revised proposals that are the subject of this report, namely:

Binsted Parish Council, Bentley Parish Council, Froyle Parish Council, East Hampshire District Council, South Downs National Park Authority, The Ramblers, The Open Spaces Society, Natural England, Hampshire County Council's Area Countryside Access Manager, and local residents who contacted the County Council during the initial consultation. Additionally, the County Council Member for the Alton Rural division, Councillor Mark Kemp-Gee, has been made aware of the application. Where responses were provided, these are set out below (note that responses are only included where they specifically relate to the latest proposals).

33. The Ramblers

The Ramblers have no objection or any further comment in the light of the new proposals: *"It looks like a pragmatic solution, reducing safety risk and not making any ugly structures. So hence our tacit support."*

34. The Opens Spaces Society

The Open Spaces Society were consulted on this proposal and confirmed they have no objection.

⁵ <https://www.gov.uk/raib-reports/fatal-accident-at-alice-holt-footpath-crossing-hampshire>

Consideration of the legal tests

Buckthorne Oak crossing – Section 118A

Whether it is expedient in the interests of the safety of members of the public that the path should be extinguished

35. It is apparent from NR's narrative risk assessment and the positioning of the crossing point in relation to Bentley Station that the crossing poses a risk to public safety. The sighting distances are inadequate in both directions when crossing from the 'Up' side of the line, and in addition to this the proximity of the crossing to the station results in stopping services often extend up to and beyond the crossing, forcing users to peer round stationary trains in order to assess whether it is safe to cross the opposite line. These issues are exacerbated by the apparent increase in use of the crossing, observed by NR in its recent surveys (an increase from an average of 7 users per day in 2018 to 15 users per day in 2020).

The effect that the Order would have on users of the public rights of way network as a whole

36. It is considered that, although the closure of this part of Footpath 55 may inconvenience some users, the impact upon the rights of way network as a whole will not be significant. The existence of another 'at grade' crossing just over one hundred metres to the west provides a nearby alternative route, and most users of the Buckthorne Oak crossing will be using the path for recreational purposes, often as part of a lengthy circular walk. The section of path that would be extinguished serves no other purpose than to provide a link across the railway - the intersection of Footpath 55 with Footpaths 38 and 56 at Point K, and with Footpath 44 at Point J, mean that the removal of this link will not have any wider impact upon the utility of those paths.

Whether it is reasonably practicable to make the crossing safe for public use

37. NR has confirmed that it is not possible to improve the safety at the Buckthorne Oak crossing, and it is apparent that problems resulting from the length of the platform at Bentley Station and stopping services up to 12 carriages in length would not be resolved through additional safety measures at the crossing itself. NR has advised that there has been a near miss at the crossing recently which has further emphasised the need for the closure.

Other options considered that could improve safety

38. NR had previously considered the viability of providing a tunnel or a bridge at the Alice Holt crossing. The cost and logistical challenges associated with these options (plus significant local opposition) meant that they were ruled out. The same issues would arise in relation to the level crossing at Buckthorne Oak – the provision of a tunnel or bridge has been discounted by NR.

Arrangements for ensuring that appropriate barriers and signs are erected following confirmation of the Order

39. NR has undertaken to ensure that appropriate barriers and signs are erected following the confirmation of the Order.

Conclusions - Buckthorne Oak 118A application

40. Based on NR's narrative risk assessment, sighting distances at the crossing are inadequate, and the level of use has doubled during recent years, increasing the overall risk level.

41. Further, the configuration of Bentley Station creates an additional safety issue, with stopping services presenting an additional hazard for people wishing to use the crossing.

42. It is therefore recommended that NR's application is accepted, and that authority is given for the requested order to be made under section 118A of the Highways Act 1980.

Alice Holt Crossing – Section 119A

Whether the point of termination of the diversion route would be on the same highway, or a highway connected with it, over which subsists an equivalent right of way

43. The diversion of Footpaths 38 and 44 would result in both terminating on the same highways as was the case prior to a diversion – Footpath 44 would still terminate at a junction on Station Road, and Footpath 38 would still terminate at a junction with Footpath 44 (albeit at a point prior to it crossing the railway).

Whether it is expedient in the interests of the safety of members of the public that the path should be diverted

44. Although the proposed diversion will not remove the 'at-grade' crossing within the footprint of Bentley Station, it will rationalise the number of public rights of way crossing the line at the same location by reducing them from two to one, and provide a more logical crossing, perpendicular to the railway (as opposed to the two recorded routes that cross the line at an angle). Effectively, the proposed diversion would simply formalise the 'status quo'. If the currently recorded routes were to be reinstated it would create safety issues, with users having to descend from the platform edge to use Footpath 38, and in the case of both paths, extending the time users spent crossing the line. As a result, it is considered that the proposed diversion will improve the safety of the crossing.

The effect which the Order would have on land served by the existing right of way

45. All of the land over which the proposed diversion runs is owned and managed by NR. There will be no impact upon any other land resulting from the order.

The effect which the Order would have on land over which the new right of way is created

46. Again, the land over which the proposed diversion route runs is owned and managed by NR, and so there will be no impact upon any non-operational land as a result of the order.

Whether the diversion route will be substantially less convenient to the public

47. The distance between Points F and G will be increased by approximately 24 metres as a result of a diversion. The difference between the distance of A-G-H and A-B-C-D-E is approximately 15 metres. Neither increase is considered to be substantially less convenient to the public in the context of the overall length of the affected paths, both of which extend for several hundred metres southwards from Bentley Station.

Whether it is reasonably practicable to make the crossing safe for public use

48. As the proposed diversion will not be removing at-grade public access, this is not a relevant consideration in this instance.

Other options considered that could improve safety

49. Again, because of the negligible change in the alignment of the public right of way at the crossing, and the fact that at-grade access will not be affected, this is not a relevant consideration.

Arrangements for ensuring that appropriate barriers and signs are erected following confirmation of the Order

50. NR has undertaken to ensure that appropriate barriers and signs are erected following the confirmation of the Order.

Conclusions - Alice Holt 119A application

51. In light of the fact that alterations to the existing crossing are minor in nature, it is considered that some of the legal tests that would ordinarily apply to a section 119A application are not relevant in this instance. However, it is considered that those tests that are still relevant have been met.

52. In terms of whether it is expedient to make the order in the first instance, it is considered that it would be in the interests of public safety to carry out the proposed realignment and consolidation of the two public footpaths into one single crossing point.

53. It is therefore recommended that NR's application is accepted, and that authority is given for the requested order to be made under section 119A of the Highways Act 1980.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because the proposal is an application to divert a public right of way and requires determination by the County Council in its statutory role as the local highway authority.

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.)

Document

Application File
Reference: PPO 5170 (Binsted)

Location

*Countryside Access Team
Universal Services
The Castle
Winchester
Hampshire
SO23 8UD*

EQUALITIES IMPACT ASSESSMENT:

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 by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) 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 protected characteristic that are connected to that characteristic;

- Take steps to meet the needs of persons sharing a relevant protected characteristic that are 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 in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

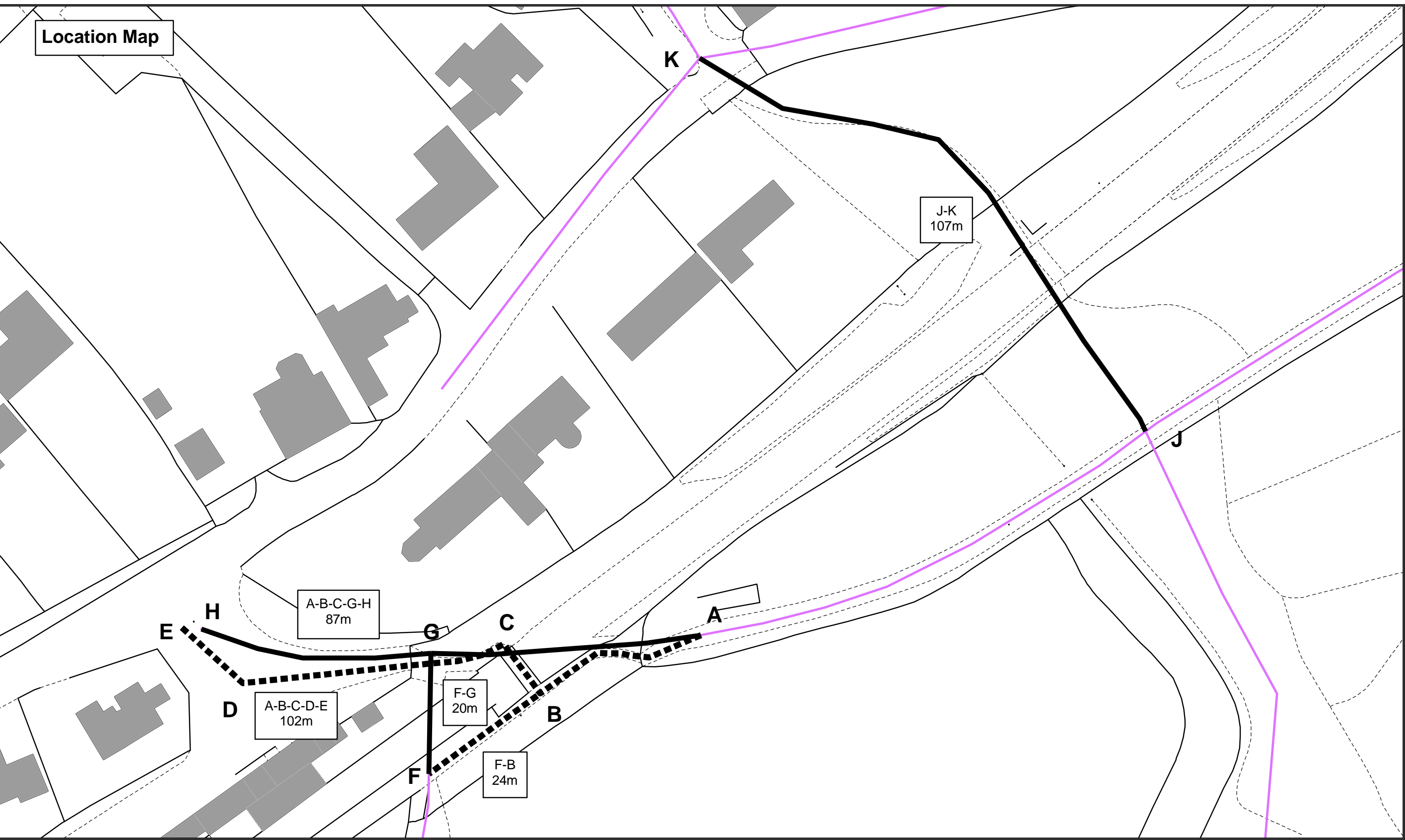
It is not considered that there are any aspects of the County Council's duties under the Equality Act 2010 which will impact upon the determination of this Public Path Order application.

3. Climate Change Impact Assessment:

Hampshire County Council declared a climate change emergency on 17 June 2019 and a Climate Change Strategy and Action Plan has since been adopted. The County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

The legislative framework for Public Path Orders does not enable the decision maker to take into account any environmental concerns relating to climate change, and a climate change impact assessment has therefore not been carried out in relation to this application.

Location Map



LEGEND 1:600

- Footpath
- Footpath to be Extinguished
- - - - -** Footpath to be Added

Alice Holt (part of Binsted Footpath 44)

In its most recent risk assessment this crossing has been assigned an ALCRM score of C3, which means it has a high to medium level of both individual and collective risk. It currently ranks 8th riskiest of 151 footpath/bridleway crossings on the Wessex route.

The following key risk drivers were identified by ALCRM and contributed towards the risk score:-

Current usage of Alice Holt

A census was carried out in 2019 to assess the level of use at the Alice Holt level crossing. The census data shows usage was a mix of walkers, local dog walkers, passengers, cyclists, rambles, walkers and wheelchair/mobility scooters.

The majority of cyclists obeyed signage and dismounted before crossing and the majority of dogs were kept on leads. However, a small number of users were observed to ignore signage.

Train passenger usage is estimated to be low as the majority of trains are signalled into platform one from where most passengers will continue their journey on the north side of the station via the station entrance to the car park or Bentley village. The footbridge also provides platform to platform access. Wheelchair access is from platform one only.

Due to its location, adjacent to Alice Holt Woods, it is assumed many crossing users particular at weekends are likely to be irregular users. Possibly unfamiliar with the setup of the Crossing and its attendant dangers.

Low horizon can result in sun glare, resulting in certain times of the day and year when a user may be dazzled by the sun when trying to locate trains approaching the crossing.

The crossing is also the beginning of the Shipwright's Way, a long-distance trail. The Shipwrights Way is advertised as suitable for all users.

Obstructions caused by weather conditions

As previously mentioned, low horizon can result in sun glare, resulting in certain times of the day and year when a user may be dazzled by the sun when trying to locate trains approaching the crossing. Furthermore, a train driver may also be dazzled by the sun glare resulting in reduced visibility of the tracks and level crossing. Should there be a user crossing, the driver may not see them.

Railway traffic

Considering the types of users that the Crossing, the line speed of 70mph in both directions presents a significant risk.

Trains travelling and stopping in the up direction are requested to sound their horn to alert level crossing users accordingly.

As a side note, the stopping up of the Crossing would reduce the noise pollution in the area that over the years has received complaints.

The provision of a footbridge with lifts will not only improve accessibility, but also ensure that pedestrian journeys over the railway are fundamentally safer and no longer subject to train movement.

Sighting distance

A speed of 1.189 metres per second is used to calculate the time it takes an able-bodied user to traverse a crossing, i.e. pass from decision point to a position of safety on the other side. The recommended decision point for a footpath crossing stands at a minimum of 2m from the

nearest running rail. The length of traverse is then calculated from this point until 2m past the furthest running rail.

At Alice Holt this gives a crossing traverse length of 9m.

$$9/1.189 = 7.57\text{s traverse time}$$

The calculated time in traversing the crossing should be increased by 50% if the crossing has a high number of vulnerable users. Alice Holt is considered to have a high number of vulnerable users.

$$7.57\text{s} \times 50\% = 11.35\text{s}$$

Total traverse = 11.35s.

The maximum line speed at Alice Holt level crossing is 70mph for passenger trains and 45mph for freight trains. For sighting calculations, the assessment is mandated to use the maximum attainable speed that trains can travel.

Not all trains will be travelling at line speed. This is not only due to the fact that passenger and freight services will travel at different speeds, but also to the potentially significant variation in speeds between stopping (either accelerating from the station or decelerating towards it) and non-stopping passenger trains.

This variance in speed is a recognised and important source of risk to those crossing the railway. It can, and often does, make it difficult to make accurate assumption about the speed of an approaching train and, in consequence, to decide whether it is safe to cross.

The point at which the train is considered to be visible is when the majority of the front of the train (including headlight) is visible; this must then remain visible without significant or total interruption/obscuration – either momentary or prolonged.

| Sighting perspective | Required Sighting for 11.35s traverse time | Measured Sighting* |
|---|---|---------------------------|
| Upside looking towards up direction train approach | 355m | 160m |
| Upside looking towards down direction train approach | 355m | 233m |
| Downside looking towards up direction train approach | 355m | 402m |
| Downside looking towards down direction train approach | 355m | 437m |

Usage averages at 93 pedestrians and cycle users per day. There have been several reported near misses over the years and a fatality in 2016.

| Event Date | Short Description |
|---------------------------|---|
| 16-Mar-20 At 17:06 | 1A47 reported a teenager ran across Alice Holt foot crossing at Bentley in front of the train. No near miss was reported, and the emergency brakes were not applied. |
| 05-Oct-16 | Fatality - train struck person in mobility scooter |
| 17-Jul-16 | Driver of up stopper reported a near miss, as they were approaching a MOP used the crossing |
| 25-Jan-13 | Two female joggers crossed Alice Holt Foot Crossing whilst a train was approaching |
| 19-May-12 | Driver of 1A25 reported 3 persons on the upside playing chicken at Bentley |
| 24-Oct-07 | 1A50 1515 Alton to Waterloo reported a near miss with a male cyclist |
| 18-Oct-07 | Driver 1A56 1644 Alton to Waterloo reported 2 people crossed in front at foot crossing |
| 22-Jun-06 | Alice Holt IC: 1A58 reported a near miss with a male jogger |
| 19-May-06 | 1A55 reported 5 drunken youths cross in front of his train, not a near miss |

In deciding what risk mitigation measure to pursue, Network Rail, generally, carries out an option assessment which provides a comparative analysis of the risk reduction achieved by any given measure, seen against its cost. As an arms-length public body, Network Rail holds responsibility to the public purse and is not only bound to reduce the risk to an “as low as reasonably practicable” level but also, to deliver value for money.

Significant sighting improvement are not possible at the Crossing due to the curvature of the track. Vegetation is also an issue at the Crossing however the Crossing is kept on vegetation control plan to help maximise sighting.

Miniature Stop Lights (MSL) do offer protection at crossings like Alice Holt, however there is a reliance on users obeying the lights. It is possible that users may ignore the lights and still cross if they believe they can make it across in time. However, the costing for MSLs at this location is grossly disproportionate. This option has been considered and is discussed at length in the 2020 July Narrative Risk Assessment.

Whilst boards are in place and minimum sighting is compliant, this is not enough to mitigate the risk at the Crossing as the 14-day 2019 census shows that there is an increasing level of footfall over the Crossing, this also increases the chances of further misuse and trespass. This Crossing has a history of trespass and misuse, youths have previously attacked trains with stones, putting trains and passengers in danger, including their own lives.