The Planning Inspectorate

Order Decision

Site visit made on 20 August 2015

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 September 2015

Order Ref: FPS/X2600/4/12

- This Order is made under Section 119A of the Highways Act 1980 (the 1980 Act) and is known as the Norfolk County Council (Gissing: Part of footpath 13, Burston and Shimpling: Part of footpaths 14 and 15) Rail Crossing Diversion Order 2014.
- The Order is dated 10 October 2014 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Norfolk County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision.

Preliminary Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the routes at issue on Thursday 20 August 2015.

2. The at-grade crossing of Gissing footpath 13 is the subject of a temporary closure order made under the Road Traffic Regulation Act 1984. As part of this temporary closure, Network Rail has removed the stiles which were present at the railway boundary fence and has erected a new fence on the western side of the railway. The fence on the eastern side of the railway is intact at the crossing point although it is discontinuous on the eastern side of the railway between the crossing and the footbridge at point D. Despite these restrictions, I was able to view the crossing from those parts of the footpath not affected by the temporary closure and to view the proposed alternative paths.

Procedural matters

3. The Ramblers' Association (RA) submits that the recorded position of Gissing 13 west of the railway is anomalous as the hedge running west from the level crossing forms the parish boundary and path users have always walked to the north of this hedge to access the stile at the level crossing. The RA is of the view that the Order should have been made in such a way to correct this anomaly and if that were not possible, then it should be modified to acknowledge that point A is to the north of the boundary hedge and ditch and that a means of crossing the boundary ditch will be required to be recorded in part 2 of the Schedule.

4. The Council acknowledges the drafting error on the definitive map and notes that a second set of dots representing the parish boundary has been drawn on

the definitive map in an attempt to show the path as running to the north of the parish boundary. The definitive statement for footpath 13 reads '*Starts from the Burston Road by a stile and runs in a southerly direction passing the eastern end of F.P. 12 to the parish boundary. The path then runs eastward along the parish boundary to join Burston F.P. 15 at the railway line*'.

5. Although the definitive map shows footpath 13 to the south of the parish boundary, the Council places reliance upon the definitive statement as evidence of the position of the footpath. The Council cites the findings of the Court in *R (oao Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs [2005] EWHC 119 (Admin)* and the guidance offered in Advice Note No. 5 published by the Planning Inspectorate in support of its position. In the Council's view, when taken together, the definitive map and statement describes a path which is to the north of the parish boundary.

6. The Council submits that consideration should be given as to whether part 2 of the schedule should be modified to include reference to a bridge crossing of the parish boundary ditch and has submitted a form of words if such a modification is considered necessary.

7. I saw on my site visit that there was no means of crossing the field boundary at the point to the south of the pond where the Order plan shows footpath 13 turning to the north-west; I also saw that the western end of the railway crossing was on the north side of the boundary hedge. Taking the definitive statement as being a description of the position of footpath 13 and the definitive map as being an attempt to reflect that description, I conclude that point A on the Order plan is to the north of the parish boundary and not on the parish boundary or to the south of it as suggested by the Order plan.

8. Given that conclusion, I consider that it is necessary for part 2 of the schedule to be modified to include a reference to footpath 13 being diverted approximately 4 metres from the western end of the level crossing to the boundary ditch. The works required to bring the new path into a fit condition for public use will also include bridging the ditch and the inclusion of a bridge will need to be set out in the schedule. As the bridge is not a limitation on public use but forms part of the highway, it is not necessary for this feature to be recorded in Part 3 of the schedule.

9. It is not possible to modify the Order to correct the anomaly identified between the definitive map and statement by modifying this Order in the manner suggested by the RA; the provisions of section 119A are quite clear that what is to be diverted is that which is necessary to ensure the safety of the public. The diversion of the path to the west of point A is not a safety issue; the resolution of the anomaly between the map and statement is a matter which can be property addressed by the Council under the provisions of section 53 of the Wildlife and Countryside Act 1981 in connection with its duty to keep the map and statement under continuous review and to make requisite modifications.

10. There is no means of crossing the rails via footpath 14, and the contention of Network Rail is that the recording of footpath 14 on the alignment shown is in error as no such footpath existed on that alignment prior to the construction of the railway and no provision had ever been made for access over the rails at this point. The RA considers it unlikely that anyone would ever have walked the line of footpath 14 as shown in the definitive map as doing so would have

involved climbing down into and then out of the railway cutting when there has always been an accommodation bridge at point D. The RA supports the correction of the apparent mapping anomaly by means of the Order.

11. Although I do not consider that the Order can be modified to correct an anomaly with regard to the position of that part of footpath 13 to the west of the railway, I do not consider that the proposed diversion of footpath 14 is aimed at correcting an anomaly. Although it is common ground between Network Rail and the RA that there has never been an at-grade crossing on footpath 14, there does not appear to be a conflict between the definitive map and statement regarding the position of the path. The definitive statement for footpath 14 records that the path runs over a footbridge and crosses the railway; the position of the footbridge referred to is shown on the definitive map by the symbol 'FB' and is some distance to the west of the railway. The diversion of part of footpath 14 in addition to that part which crosses the railway is requisite to maintain a reasonably direct link between footpath 15 and Bridge Green.

The Main Issues

12. If I am to confirm the Order, I need to be satisfied that it is expedient to divert the footpaths at issue, having regard to all the circumstances, and in particular to:

    a) whether it is reasonably practicable to make the crossings 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.

13. I consider that the salient points relate to the following issues:

    a) the current safety of the pedestrian railway crossings for the public;

    b) the safety of the alternative routes in comparison;

    c) the convenience and enjoyment of the alternative routes for pedestrians in comparison;

    d) whether any improvements to the pedestrian crossings, so as to make them safe, are reasonably practicable; and

    e) whether, if the Order is confirmed, adequate arrangements have been made to secure the redundant crossings.

Reasons

Background

14. Public footpaths 13 Gissing and 14 Burston cross the Great Eastern Main Line between Diss and Norwich. Footpath 13 existed prior to the construction of the railway and crosses the rails on the level at a point known as Symonds crossing. Footpath 14 was claimed as a public right of way under the National Parks and Access to the Countryside Act 1949; Network Rail submit that at all material times the public has used the footbridge at point D to cross the railway, no crossing being present on the line of footpath 14. The maximum permissible line speed on both up (southbound) and down (northbound) lines is

100mph (161Kmh) which is proposed to be increased to 110 mph (177KMh) over the next decade.

Whether the current pedestrian railway crossings are safe

General

15. The estimated time taken to cross the running rails (the crossing time) is calculated as the time required to walk between 'decision points'. Decision points are found on either side of the line and are defined in the relevant guidance[1] as *'a point at which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made'*. The decision points are taken to be the point at which notices bearing the legend '*Stop Look Listen Beware of Trains'* are situated.

16. The critical figure in relation to the crossing time is the warning time. The warning time is calculated as the shortest possible time for trains to travel the distance to the crossing from the point at which they can first be seen by a pedestrian standing at the relevant decision point (the sighting distance). Warning times are calculated using the maximum permitted travelling speed on the line.

17. The generally accepted principle regarding at-grade crossings is that for a crossing to be deemed safe, the warning time should be greater than the crossing time. It was the Council's and Network Rail's case that Symonds crossing did not comply with modern safety requirements, nor would any at-grade crossing on the alignment of footpath 14.

18. The calculations as to crossing times, warning times and sighting distances submitted by Network Rail were not contested by the objectors.

Footpath 13

19. The decision points are 2 metres from the nearest running rail on either side of the railway at the foot of the short flight of steps that takes the footpath down into the railway cutting. Network Rail has calculated the crossing time for an able-bodied person to be 7.64 seconds and 11.48 seconds for a vulnerable person[2].

20. Although sighting distances for southbound trains was calculated to be 470 metres, the view of approaching northbound trains was reduced by the curvature of the line to 237 metres on the western side of the crossing and 404 metres on the east side.

21. For northbound trains travelling at 100 mph (161Kmh) the warning time for pedestrians wishing to cross the railway from the west is 5.3 seconds and for those wishing to cross from the east is 9.04 seconds. If line speeds are increased to 110 mph (177Kmh), as Network Rail expect to be the case in the future, the sighting distances and warning times will reduce accordingly.

22. At current permissible line speeds, there is insufficient time for an able-bodied pedestrian to cross the rails safely from the western side when a northbound

[1] Office of Rail Regulation Railway Safety Publication No. 7 'Level Crossings: a guide for Managers, Designers and Operators' (2011).
[2] Network Rail define a 'vulnerable' person as the young, the aged, those with a sight or hearing or mobility impairment or those unable to walk fast or unaided.

train is approaching. For vulnerable pedestrians, there is insufficient time to cross the line from either side from the point in time when a train first comes into view irrespective of the direction in which a train is travelling. I am satisfied that the warning time for pedestrians for a train running at the maximum permissible line speed would not satisfy the current safety criteria.

23. Based on the current permissible line speed on the northbound line, Symonds crossing cannot be considered safe for pedestrians as the crossing time from the west exceeds the warning time of the approach of a northbound train. I therefore accept that the crossing presents a risk of danger to the public.

Footpath 14

24. There is no level crossing at the location shown in the definitive map and Network Rail submits that there never has been a level crossing at this point. Network Rail also submits that the creation of a level crossing (should the Order be not confirmed) would not be possible under the Office of Rail Regulation's current guidance.

25. Although Network Rail did not provide any calculations regarding sighting and warning times for this crossing, from a study of the Order plan and from my observations on site, it is highly likely that sighting distances and warning times for pedestrians crossing from the west over the northbound line would not satisfy current safety criteria. In addition to the problems posed by the curvature of the line, the abutments of the bridge at point D would further restrict the visibility of an approaching northbound train.

26. I consider that if the crossing point shown on the definitive map did exist, use of it would present a risk of danger to the public.

The safety of the alternative routes in comparison to the existing routes

27. The effect of the Order would be to re-align parts of footpaths 13, 14 and 15 so that pedestrians using the paths will cross the railway by means of the bridge at point D.

28. As the alternative routes would allow path users to negotiate the railway without bringing them into contact with it, the proposed alternative routes do not pose a risk to pedestrian safety. I consider that the alternative routes are safer in comparison to the existing routes, and sit in the balance against the retention of the current crossings.

The convenience and enjoyment of the alternative routes in comparison to the existing routes

29. On behalf of the Open Spaces Society, Mr Witham submits that the proposed diversion of footpath 15 would result in a more circuitous route for pedestrians wishing to travel north-west from point C and would lead to the footpath running, in part, along a farm track where pedestrians would be put at risk by moving vehicles. Furthermore, the diversion would add approximately 300 metres to a journey along footpath 15 and instead of open views over the surrounding countryside from the current cross-field section of footpath 15 enjoyment would be reduced as the alternative path would run adjacent to the trees at the top of the railway cutting. Mr Witham's view is that convenience and enjoyment would be reduced by the proposed diversion.

30. There is no evidence before me to suggest that the current use of these footpaths is for other than recreational purposes. The increase in journey times and distances between Station Road and Burston Road using the proposed alternative C – D – A is therefore unlikely to inconvenience those undertaking a journey for pleasure or exercise.

31. There is some evidence from Network Rail that Symonds crossing and the footpaths that lead to it are very rarely used, if they are used at all. A motion operated camera set up at the crossing between 25 June 2014 and 4 July 2014 did not record any actual use of the crossing over a 10 day period in the middle of the summer. During the three hours I spent on site, I only observed one individual out walking his dog. On the basis of the results of Network Rail's census and my own observations, I am of the view that the few people who use these footpaths for recreational purposes are unlikely to be inconvenienced by the proposed re-alignment of the footpath network.

32. The proposed new terminal point of footpath 15 at D is at a point on the diverted section of footpath 14 which remains connected to the residual part of footpath 15 at C. For those pedestrians wishing to travel north-west along footpath 15 and footpath 13, the new terminal point of footpath 15 at D will be substantially as convenient for pedestrians.

33. For those pedestrians wishing to travel east – west on footpath 14, the proposed diversion is likely to be more convenient as it provides a safe direct route via the footbridge at D. Whilst the relocation of the footpath on the farm access track may pose some risk to pedestrians through the movement of vehicles, the track did not appear to be heavily used and is 3 metres wide at this point with verges at either side which will provide refuge for pedestrians if necessary. I consider that the convenience of a direct route outweighs the limited risk of conflict with vehicular use of the track.

34. Those wishing to cross the railway at Symonds crossing have to negotiate stiles and steps down to the track whereas the proposed route will only require users to negotiate the steps at the footbridge at point D. Whilst the steps at the bridge are more restrictive than a ramp would be, the absence of stiles along the proposed path will be more convenient for some users.

35. Although views of the surrounding countryside to the east of the railway may be limited by the path being parallel to the railway, extensive views to the west will be available. Furthermore, views of the surrounding countryside to the east of the railway will be available from that section of footpath 14 between points C and D. I do not consider that the diversion will have a significant negative impact upon the enjoyment which can be derived from a walk along these footpaths.

36. Overall, I consider that the proposed diversions would be reasonably convenient to users of footpaths 13, 14 and 15 and in some respects would add to the enjoyment of those undertaking a walk in the area. The proposed diversion has the benefit of retaining a through route from Station Road to Burston Road; any minor inconvenience to users of the re-alignment of these footpaths will be countered by the increased safety of the alternative routes.

Whether any improvements to the pedestrian crossing, so as to make it safe for use by the public, are reasonably practicable

37. Network Rail's view is that risk to pedestrians posed by Symonds crossing can be best mitigated if that risk is removed altogether by the closure of the at-grade crossing and its replacement by the existing overbridge.

38. The provision of whistle boards would not be effective at this location as to give sufficient advance warning of the approach of a train, whistle boards would have to be erected more than 400 metres from the crossing, which according to Network Rail is not permitted due to a reduction in efficacy of the whistle as a warning when sounded over 400 metres from a hazard.

39. During my site visit it was possible to hear the audible alarm sounded at the Burston level crossing to signal the approach of a train and the lowering of the half barriers across Station Road. When standing at the eastern side of the crossing, this audible alarm gave a 54 second warning of the approach of a northbound train. However, I only heard the alarm on two occasions when the wind was in the right direction and there was no other background noise and I did not hear the alarm at all when standing on the western side of the crossing. Although the alarm from Station Road provides some assistance to users, the fact that the sound does not always carry to the crossing means that the audible warning given at Station Road cannot be relied on to increase warning times at Symonds crossing.

40. Network Rail argue that a permanent speed restriction on this section of line would not be feasible due to the disruption to train timetabling and the adverse effect it would have on the three half-barrier vehicular level crossings in the area; increased waiting times at such road crossings may lead to impatient users passing under or around the barriers before the train has passed.

41. Consideration had been given to the installation of Miniature Stop Lights (MSL) at Symonds crossing however a MSL system would be disproportionately expensive to install and maintain in relation to the low level of use demonstrated by the 2014 census[3]. Furthermore, one weakness of MSLs is that they would not prevent use of the crossing and there have been a number of fatalities at pedestrian and other crossings where MSLs have been installed.

42. Given that at a maximum permissible train speed of 100mph there would still be an attendant risk to pedestrian safety at Symonds crossing even if MSLs were installed, I do not consider that the extensive and costly works which would be required for the installation of such a system could be said to be reasonably practicable.

43. Mr Witham suggests that rather than diverting footpath 13 and 15 to be parallel with the railway a footbridge could be constructed in the vicinity of Symonds crossing. In engineering terms it would not be impossible to provide a bridge or tunnel in the vicinity of the crossing, but this would not be a reasonably practicable solution in economic terms given the limited use of the crossing and the proximity of an existing bridge capable of carrying pedestrian traffic.

44. Overall, I conclude that possible improvements to the crossing could not be said to be reasonably practicable.

[3] Network Rail estimate that a MSL system would cost £250,000 to install

Whether, if the Order is confirmed, adequate arrangements have been made to secure the redundant crossing

45. Access to Symonds crossing has been prevented by the removal of the stiles which had been present in the boundary fence and by the erection of a new boundary fence on the western side of the railway. Although the stiles have been removed the anti-slip infill between the rails remains in place.

46. As part of its application, Network Rail specified that the crossing would be securely fenced off to prevent unauthorised access to the railway; this has already been undertaken as part of the temporary closure of the crossing. Network Rail has also agreed to erect any signage required by the highway authority in relation to the crossing and other parts of the diverted paths. I have no reason to doubt that adequate arrangements have been made to secure the redundant crossing.

Width

47. The Order proposes that the diverted path D – E will have a width of 1 metre. Mr Witham submits that this width is insufficient to allow two pedestrians to pass in opposite directions and is contrary to the Council's own policy as set out in its Rights of Way Improvement Plan which requires a minimum width of 2 metres for diverted unenclosed footpaths[4]. The Council submits that the widths specified in the ROWIP do not normally apply to cross-field paths; however there does not appear to be any statement within the ROWIP which specifies that this criterion does not apply to cross-field paths.

48. I saw that within the stubble left in the field after harvest that a worn line was visible between point D and the bridge over the ditch to the south of point E. This worn line had the appearance of having been created by pedestrians walking in single file through the growing crop as opposed to having been reinstated by the landowner. The worn path visible in the ground was little more than 30cm in width.

49. Footpath 14 will pass through the centre of an arable field where restoration widths following ploughing are required by schedule 12A to the 1980 Act to be a minimum of 1 metre and a maximum of 1.8 metres. I concur with Mr Witham a width of 1 metre is insufficient to allow two pedestrians to pass each other, and although the physical evidence on the ground suggests light single file use to avoid excess disturbance of a growing crop, the defined width of the path should be at least the maximum width which a landowner is required to reinstate by the clearance of crops and surface restoration work. I consider that section D – E of footpath 14 should be recorded as having a width of 1.8 metres and propose to modify the Order accordingly.

Other matters

50. In his objection Mr Bowell questioned the numbering of the paths to be created by the Order, and wondered whether that part of A – D in Burston and Shimpling should be recorded as 15A as otherwise footpath 15 would be in two parts. In Mr Bowell's view the whole of A – D – C in Burston and Shimpling should be recorded as footpath 15. The RA made similar observations on this issue.

[4] ROWIP 2007-2017 Strategy process and practice p37

51. The numbering system by which individual paths or sections of path can be identified is an administrative matter for the Council. I know of no authority which states that a numbered footpath cannot be in two sections, but for the purpose of administration of the definitive map and statement, the Council may choose to identify that part of A – D in Burston and Shimpling in some way which sets it apart from the unaffected section of footpath 15.

52. Mr Bowell also noted that parts of footpath 14 to the west of point E were unavailable on the ground and considered that it would have been simpler to extinguish the whole of the path and create a new path on the line currently waymarked by the Council. I saw on my site visit that there was no indication of a path through the wood at point E but that slightly to the south there was a bridge over the drainage ditch which was waymarked as a public footpath. The resolution of the unavailability of the definitive line of footpath 14 to the west of point E is a matter for the Council to address as the highway authority.

Conclusion

53. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications.

Formal Decision

54. I propose to confirm the Order subject to the following modifications:

    (i) Amend the second paragraph of part 2 of the schedule to read: "Part of Footpath 13 Gissing and Part of Footpath 15 Burston and Shimpling: a footpath as shown on the map attached to this order with a width of 3 metres from GR TM 1476 8404 (Point A on the map contained in this order) running in a south-south-westerly direction for 4 metres, crossing a plank bridge to the parish boundary with Burston and Shimpling and continuing in a south-south-westerly direction, along a field edge adjacent to the railway cutting for approximately 405 metres to GR TM 1461 8367 (Point D on the map contained in this order)."

    (ii) amend line 5 of the first paragraph of part 2 of the schedule to record the width of the path between points D and E as being 1.8 metres.

55. Since the Order as proposed to be confirmed would affect land not affected by the Order as submitted, I am required by virtue of paragraph 2 (3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

Alan Beckett

Inspector