



Order Decisions

Inquiry Opened on 4 June 2019

Site visit made on 26 September 2019

by Alan Beckett BA MSc MIPROW

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

Decision date: 12 November 2019

Order Ref: ROW/3207788 ('Order A')

- This Order is made under Section 119A of the Highways Act 1980 (the 1980 Act) and is known as the Suffolk County Council (Parishes of Creting St Mary and Needham Market) (Creting St Mary Footpath 39 (Part) (Gipsy Lane Crossing) Rail crossing Diversion Order 2018.
- The Order is dated 4 April 2018 and proposes to divert the public right of way shown on the Order plan as A – B – C and described in the Schedule to a new route shown in the order plan as C – D – E – F – G – H – I – J – K – L – M and described in the Schedule.
- There were 14 objections and one representation in support outstanding at the commencement of the inquiry.

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

Order Ref: ROW/3207789 ('Order B')

- This Order is made under Section 118A of the 1980 Act and is known as the Suffolk County Council (Parishes of Needham Market and Creting St Mary) (Needham Market Footpath 6 and Creting St Mary Footpath 36 and any unrecorded public footpath rights) Rail Crossing Extinguishment Order 2018.
- The Order is dated 4 April 2018 and proposes to extinguish the public right of way shown on the Order plan as A – B – C – D – E and D – F and described in the Order Schedule.
- There were 5 objections and 1 representation in support outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The inquiry opened on 4 June 2019 but was adjourned as proofs of evidence and accompanying appendices submitted by Network Rail had not been sent to the objectors. The inquiry resumed on 24 September 2019 (the earliest date which was suitable for all parties) and sat until 26 September 2019.
2. I made an unaccompanied inspection of the routes at issue on the evening of 3rd June and a final inspection on the afternoon of 26 September in the company of the parties or their representatives.
3. At the inquiry, Suffolk County Council ('the Council') requested a minor modification to Order A in relation to part 2 of the schedule and the reference to a 'staggered barrier' which was proposed to be erected at point C. The Council and Network Rail understood that the affected landowners required the erection of a fence or other barrier to the north-east of the proposed footpath

to protect their land and livestock from trespass. The erection of a fence would mean that there would be no need for a staggered barrier within the hedge at point C as livestock would be retained within the field by a fence. Consequently, the Council requested that the schedule be amended to record a gap at point C.

4. At the inquiry, Mr & Mrs Fayers questioned the need for a gap at point C as they considered it a means by which livestock could stray from the field. Given that there was confusion as to whether a fence would or would not be required by the landowners, an amended modification was sought to record a kissing gate at point C which would be the least restrictive stock-proof of barrier which would maintain access for as wide a group of users as possible. If I conclude that Order A should be confirmed, I will modify part 2 of the schedule as requested.
5. During the adjournment, attempts had been made to strike an agreement between the parties regarding the location of the proposed footpath. One possible option advanced was that the diverted path should emerge from the south-eastern portal of the culvert and run adjacent to the Network Rail boundary fence. Whilst this was said to address most of the concerns of the objectors as to the impact the footpath would have upon their land, it had not been possible to reach such an agreement. I have therefore considered Order A in relation to the statutory tests found in s119A of the 1980 Act. Only if I find that the proposal in Order A is not satisfied will I consider whether a footpath in an alternative location would satisfy those tests.
6. Mr and Mrs Fayers submitted that the description of the paths at issue in the Orders as being in the parish of Creting St Mary is erroneous as the parish boundary with Needham Market has been at the River Gipping for many years; it is contended that the path description in the Orders could have given rise to confusion. In a similar vein, the objectors also considered the sequential description (Footpaths 1 – 7) in the proofs of evidence submitted by Network Rail's consulting engineers (WSP) also gave rise to confusion.
7. It is evident that the definitive map and statement is behind the times in that it does not acknowledge that the parish boundary between Creting St Mary and Needham Market has moved north from the railway. Whilst acknowledging the potential for parties to be confused as to which path was being referred to, the purpose of the Orders is self-evident and those reading them would be under no illusion as to what the Orders seek to achieve. Knowledge of the finer points of local administrative boundaries or definitive map procedures is not a pre-requisite to the understanding of what Network Rail seeks to achieve by these Orders.
8. Similarly, the numbering system used by WSP in their documentation is internally consistent. It is evident when reading those documents and referring to the accompanying plans which paths are being described. Whilst WSPs documentation could have referred to the footpaths at issue in accordance with the definitive map and statement instead of using its own numbering system, it is plain from that documentation that WSP were referring to the Order routes at all material times.
9. Mr and Mrs Fayers also submitted that the statutory notices of the order had been posted at heights inappropriately low, and that a notice had not been posted at point M. Schedule 6 of the 1980 Act does not prescribe the height at

which notices have to be posted, and there is no requirement under schedule 6 to post a notice of the making of the Order other than at the ends of the path which is proposed to be diverted. The evidence submitted by the Council on this matter demonstrates that the notices were posted in accordance with the requirements of Schedule 6 and would have been legible for anyone who cared to read them. Mr Kerr had seen a notice of the inquiry at point M and I saw that the notices at point M had been present in June and remained in place in September.

10. Consequently, I do not consider that the Orders or the documents generated in relation to them are likely to have given rise to confusion as to their purpose and intent.

The Main Issues

11. If I am to confirm the Orders, I need to be satisfied that it is expedient to divert part of footpath 39 and to extinguish footpaths 6 and 36, 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.
12. I consider that the salient points under these heads include 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.
13. In addition, matters raised which can be taken into account under the heading 'all the circumstances', include the impacts upon adjacent landowners in terms of agricultural activity; the impacts upon the landowners of flooding; the impacts upon the efficient operation of the railway; other proposals considered as an alternative to the closure of Gipsy Lane crossing and the impacts upon general amenity.

Reasons

Background

14. The railway running through Needham Market was constructed under the provisions of the Ipswich and Bury St Edmunds Railway Act 1845 which incorporated the provisions of the Railway Clauses Consolidation Act 1845. The railway currently forms part of the main line between London Liverpool Street and Norwich and carries passenger and freight trains at line speeds of up to 100mph.

15. The deposited plans for the enabling Act of 1845 show that the crossings at Willow Walk and Gipsy Lane pre-dated the construction of the railway. Willow Walk is recorded in the book of reference as a public footpath in the ownership of the Surveyor of Highways and Gipsy Lane is recorded as a 'Highway or Occupation Road' in the ownership of the Surveyor of Highways or the Earl of Ashburnham. The private vehicular rights over Gipsy Lane crossing were surrendered in around 2006, with the crossing being re-configured for pedestrian use only. It is not disputed that only a public right of way on foot subsists over the crossing at Gipsy Lane.
16. Section 61 of the Railway Clauses Consolidation Act 1845 required the railway company to make and maintain convenient ascents and descents and gates or stiles on either side of the railway being constructed. The height of the railway above ground at Willow Walk resulted in it being provided with stiles and steps on either side of the railway. To accommodate the private vehicular right of way at Gipsy Lane, raised approaches to the railway were constructed with wicket gates being provided for use by the public when crossing the railway.

Orders A and B

Assessment of risk at level crossings

17. Network Rail uses a system known as the All Level Crossing Risk Model (ALCRM) as part of its risk assessment and mitigation strategy, the main purpose of which is to provide a consistent method of assessing risk at level crossings to crossing users, train passengers and railway staff. It is acknowledged that risk will vary according to the characteristics of any given crossing, the extent of use of that crossing and the frequency, volume and speed of trains passing over the crossing; such factors are considered as part of the risk assessment.
18. ALCRM considers two levels of risk; the collective risk and individual risk for any given crossing. Collective risk (the overall risk to the network and all those using it) is expressed in a simplified numeric form ranked from 1 to 13 where 1 represents the highest risk and 13 represents nil risk. Individual risk (the risk of fatality to one individual using the crossing regularly in one year) is expressed as a letter, ranked A to M where A represents the highest risk and M nil risk. A qualitative risk assessment of each crossing is carried out by individual Level Crossing Managers which feeds into the ALCRM model and allows for the identification of features or characteristics at crossings with the same ALCRM score and informs the optioneering exercise undertaken to eliminate or mitigate the risk identified
19. The most recent risk assessment of Gipsy Lane crossing was undertaken in April 2019 with the ALCRM score being recorded as C3. Willow Walk crossing has been closed under temporary traffic regulation orders since 2011 and currently has an ALCRM score of M13; the last assessment undertaken when the crossing was available for use had resulted in an ALCRM score of C4.
20. Factors in determining risk to pedestrians at a level crossing are the 'crossing time' and 'warning time'. The estimated time taken to cross the railway (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 the points at which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made. It is at these points that notices bearing the legend '*Stop Look Listen Beware of Trains*' are situated. For line speeds of up to

100mph, the decision point is taken to be 2 metres from the nearest running rail.

21. The walking speed of an able-bodied adult crossing the railway where crossing boards are provided is calculated as 1.2 metres per second. In calculating the crossing time, an allowance of 50% additional time is added to allow 'vulnerable' users (such as the elderly, those with mobility impairments or encumbered users such as dog walkers) sufficient time to cross the railway.
22. 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.
23. The generally accepted principle regarding at-grade crossings is that for a crossing to be deemed 'safe' (notwithstanding that there will always be an element of risk involving in crossing any live railway), the warning time should be greater than the crossing time. It was the Council's and Network Rail's case that Gipsy Lane and Willow Walk crossings did not provide users with adequate warning of the approach of trains running at line speeds.
24. Both Gipsy Lane and Willow Walk crossings are 'passive' crossings in that the public are required to 'stop, look and listen' for the approach of trains.
25. The calculations as to crossing times, warning times and sighting distances submitted by Network Rail were not contested by the objectors.

The current safety of the pedestrian railway crossing for the public

Gipsy Lane

26. A 9-day camera census of use in April 2019 demonstrated an average use of 58 pedestrians and 1 cyclist per day during the survey period including use by 'vulnerable' users and use during the hours of darkness. Gipsy Lane has a traverse distance of 9.2 metres between decision points; an able-bodied user would normally cross the railway in 7.7 seconds, however a 50% uplift to allow for vulnerable users sets the crossing time at 11.61 seconds.
27. The sighting distance required to allow enough warning time of the approach of a train at line speed would be 519 metres. For a pedestrian standing at the decision point on the up (eastern) side of the line looking towards a down direction (northbound) train there is insufficient sighting (328 metres) due to the curvature of the line. For a pedestrian standing at the down side (western) decision point looking towards a down direction (northbound) train there is also insufficient sighting (322 metres) due to the curvature of the line.
28. At current permissible line speeds, there is insufficient time for a vulnerable pedestrian to cross the rails safely from the eastern and western sides when a northbound train first comes into view. 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.
29. In August 2011 an accidental fatality at Gipsy Lane led to Network Rail being convicted of breaches of health and safety regulations. One of the

recommendations made by the Rail Accident Investigation Branch (RAIB) was for Network Rail to seek the closure of the crossing or if permission was not granted for the closure by the Council, then Network Rail *"should take appropriate risk-reduction measures so that pedestrians have sufficient time to cross safely and are adequately warned of the approach of trains"*.

30. The risk to the public is currently mitigated at Gipsy Lane by whistle boards and by the imposition of a temporary speed restriction (TSR) of 50mph on the down line. The whistle boards are in positions to provide an audible warning of approaching trains although such warnings are not sounded during the night time quiet period (NTQP) between 23:59 and 06:00. The April 2019 census demonstrates that there was some use of the crossing during the NTQP.
31. Network Rail do not consider the imposition of a 50mph TSR to be suitable mitigation to address the RAIB's recommendation as the TSR conflicts with its licence conditions and its franchise commitment to Greater Anglia trains for a regular service between London and Norwich in 90 minutes. Network Rail submit that around £100,000 is being paid in compensation for service delays caused by the TSR.
32. Based on the current permissible line speed on the northbound line, Gipsy Lane crossing exposes users to a considerable risk of accident as the crossing time from either side of the line exceeds the warning time of the approach of a northbound train. Whilst the mitigation measures imposed since the fatal accident in 2011 have reduced the risk to the public, the reduction in line speed on the down line does not provide a permanent solution to the mitigation of that risk. I therefore accept that the crossing presents a risk of danger to the public.

Willow Walk

33. The footpath which crosses the line at Willow Walk runs between Stowmarket Road and footpaths 35 and 38 with the junction being approximately 230 metres north-west of Valley House. Footpath 36 has been the subject of successive Temporary Road Traffic Regulation Order (TTRO) closures with the first of those TTROs being granted in 2011. The crossing has not been available for the public to use for around 8 years and the infrastructure (steps, stiles, decking boards etc) necessary to facilitate use has also been removed.
34. Due to the prolonged unavailability of the crossing, there is no current usage data for Willow Walk. The last census of use was carried out in 2011 and was based on observations of use by Network Rail staff during their time on site at the crossing; the 2011 census led to an estimated 41 uses per day. Earlier censuses had produced varying estimates of use of between 1 and 108 uses per day with these results being dependent upon the observed use during a given 40-minute period. It is not disputed that when Willow Walk crossing was open it had been used by the public as a means of access to and from the Gipping valley.
35. Willow Walk had been approached by a flight of steps on either side of the railway with stiles in the railway boundary fence. The topography of the site prevented the creation of a platform of some kind at the top of the steps on which pedestrians could wait whilst determining whether to cross the railway. The 'decision point' at Willow Walk was therefore two steps below the top of the flight on either side of the railway and below the level of the nearest

- running rail. In calculating the time required for an able-bodied user to cross the railway, Network rail have allowed additional time of 1 second per step for users to be able to travel between the decision points either side of the railway.
36. The crossing distance of Willow Walk was 9.9 metres with a crossing time of 12.3 seconds. At a line speed of 100mph, users would require 553 metres of sighting distance in order to have enough time to negotiate the crossing. The measured sighting distances was deficient in both directions for a pedestrian wishing to cross from the down (western) side of the railway and deficient in viewing a down-direction (northbound) train from the up (eastern) side of the railway.
37. The 50mph TSR on the down line does not provide any mitigation of the lack of sighting of a down-direction train for a pedestrian seeking to cross the railway from the up side. To provide enough advance warning, a whistle board on the up line would have to be located 485 metres from the crossing. Whistle boards located more than 420 metres from a crossing are not considered to be effective.
38. Based on the current permissible line speed, Willow Walk crossing cannot be considered safe for pedestrians as the crossing time from either side of the line exceeds the warning time of the approach of a down direction train and is deficient in relation to a down direction train when viewed from the up line. Although whistle boards had been installed prior to the closure, their positioning did not provide mitigation of the risk to pedestrians seeking to cross from the up side of the railway. I therefore accept that if Willow Walk were currently available for use, the crossing would present a risk of danger to the public.

The safety and suitability of the proposed alternative routes in comparison to the existing crossings

Gipsy Lane

39. Network Rail's initial proposal to address the problems at Gipsy Lane was to construct a stepped footbridge in the vicinity of the existing crossing. This proposal was not progressed due to a hostile reaction from local residents. Consequently, a Design Panel was instigated comprising representatives of Network Rail, WSP, Needham Market Town Council, Creeting St Mary Parish Council, Mid-Suffolk DC, Suffolk CC and local residents. The Design Panel considered a number of alternatives; the construction of new infrastructure in the form of ramped footbridges, ramped underpasses and the use of existing infrastructure such as the underbridge at Hawks Mill Street, the overbridge at Badley and the culverts to the north of Gipsy Lane crossing.
40. Seven different options were considered by the Design Panel which were put forward at public consultation events held in November 2015 at which responses were invited to the various options being considered. Miss Cuthbertson's evidence was that the responses received following the public consultation events expressed a preference for an alternative footpath utilising the culverts to the north of the crossing. It was acknowledged that the culvert option had viability issues such as periodic closure due to flooding, restrictions on headroom restrictions and the length of the diversion.

41. The proposed alternative utilises the existing footway alongside Stowmarket Road which serves as a shared footway and cycleway. To reduce the length of the diversion, the proposal initially consulted on has been modified to utilise the southern of the two portals and to place a section of the diverted path in the edge of the field to the south of the River Bat.
42. It is proposed to improve the footway alongside Stowmarket Road to provide a shared surface footway and cycleway 3 metres in width which will be separated from the main carriageway by a 1.5 metre grass verge. The section of footway onto which pedestrians will be diverted remains within the posted 30mph limit; automated traffic count data showed that on this section of Stowmarket Road the 85th percentile speed of traffic heading southbound into Needham Market was 31.2 mph. Given that most of the traffic passing the proposed diversion is slowing down on the entry to the town, and that pedestrians would have a 1.5 metre separation zone between them and moving traffic, the proposal is unlikely to expose pedestrians to unacceptable risk.
43. From point M on Stowmarket Road, the proposed footpath will follow a headland and reach the culvert by means of a ramped access at a gradient of 1:20, with the new path leaving the eastern end of the culvert to reach point E via a further ramped access at the same gradient. From point E to point C the footpath would follow an existing hard surfaced track. The approaches to the culvert have been designed to be suitable for use for as wide a body of users as possible.
44. In terms of accessibility for both the able-bodied and those with physical impairments, the proposed route offers a step-free means of crossing the railway. In this respect, at gradients of 1:20, the proposed alternative path would be more accessible as the approach to Gipsy Lane crossing from the south has a gradient of 1:15. The proposed alternative also removes the risk from crossing the live rails.
45. There is an issue with available headroom in the culvert which was identified early in the development of the proposal, and an issue with periodic flooding of the footpath. In normal weather conditions, the Bat flows through one portal with the second carrying water at times of high rainfall. It is accepted by all parties that on occasion, the proposed footpath will be covered by the Bat. The proposal has been designed to maximise the available headroom within the culvert whilst minimising the frequency and duration of those occasions when the new footpath will be covered by water.
46. It is proposed to engineer a footway within the southern portal which will provide 2 metres of headroom within it. Whilst this is sub-optimal compared with the height which would be required within a new-build underpass¹, a balance has been sought between maximising available headroom whilst seeking to minimise the frequency of those occasions when the footpath would be subject to flooding.
47. Greater headroom could be achieved by lowering the footpath within the culvert, but this is likely to increase the incidence of flooding. Raising the level of the footpath would have the opposite effect in terms of flooding but would

¹ Design Manual for Roads and Bridges TD36/93 requires a 'narrow' subway to have a minimum headroom of 2.3 metres

- reduce the available headroom. However, headroom of 2 metres is likely to be suitable for the majority of those who may seek to use the alternative footpath.
48. A river level monitoring survey of the Bat was undertaken between April 2016 and January 2017 with the results being correlated with rainfall data for the same period. The monitored water level in the river during the initial assessment period of April to July 2016 coincided with the four largest rainfall events recorded over the whole 9 month monitoring period. Between April and July 2016, the river level rose higher than the proposed footpath on 3 occasions; two of these occasions being associated with the same storm event which was estimated to be a 1 in 5-year storm.
 49. From the evidence gathered at the Bat during the summer of 2016 and an analysis of the predicted annual flow rate of the river without the extreme events observed in the summer of 2016, Mr Smith concluded that the proposed footpath would not be flooded in most years as a flood event which would overtop the footpath is predicted to occur with a frequency of less than 1 event each year. Mr Smith had calculated the average annual flood duration of the Bat and concluded that in an average year, the footpath was likely to be flooded for approximately 5.7 hours.
 50. It was acknowledged that at times of extreme weather events the duration of flooding arising from each event would be greater than the predicted average, but such extreme events were not expected to occur every year, and, in some years, there would be no flooding of the path.
 51. I acknowledge the predicted outcomes of the model developed by WSP for Network Rail is dependent upon the data entered into the model, and that modelling based on data collected in 2016-2017 may not reflect rainfall and localised flooding events in more recent years and that if summer and winter storms increase in frequency and severity over time, the incidence of flooding and duration of flooding may increase accordingly.
 52. However, the data on which the WSP model is built did capture some severe rainfall events which give an indication of what the effect of periods of extreme rain may be on the proposed footpath. The model therefore had some extreme rainfall and river level data within it and greater confidence can be attached to the predictions made than if the model was based simply on normal flows and normal rainfall.
 53. The periodic and temporary inundation of the proposed footpath may inconvenience those who may wish to use the new footpath, although such inconvenience is predicted to be of short duration and infrequent in the average year. Furthermore, in times of extreme rainfall leading to the Bat being in flood, it is highly likely that the onward paths adjacent to the Gipping would also be flooded which would similarly inconvenience recreational users of the local path network.
 54. The proposed footpath would emerge from the culvert on the north-eastern side of the railway and run to the residual part of footpath 39 over a hard-surfaced track which provides access to Mr Fayers fields. The adjacent fields are used to produce a hay crop with the various process involved being undertaken by an agricultural contractor. Mr Fayers gave evidence regarding the size of machinery involved in the cultivation of the land and expressed concerns about the danger such machinery would pose to uses of the footpath.

55. The track is unfenced, and it is unclear whether Mr Fayers would require a fence to be erected to the north of the track if the Order were to be confirmed. With regard to the potential for conflict between pedestrians and agricultural machinery, it would be reasonable to expect a degree of 'give and take' in any such situation, with pedestrians being required to be aware of activities taking place on the track, and vehicular users of the track being aware of the likelihood of pedestrians being present. If a pedestrian came across agricultural machinery parked or travelling along the track, it would be a simple matter to stand to one side or walk around any temporary obstruction encountered.
56. In any event, the extent of the agricultural operations carried out on the bottom field appear to be quite limited in terms of frequency and duration. Mr Fayers' evidence suggests that he has little involvement in the cultivation of the field with the contractor providing all plant, fertiliser and herbicides required. Mr Fayers was unable to state how many days of the year the agricultural machinery would be present on the track, but from the operations described, it would appear that it would be few.
57. The processes described by Mr Fayers included fertilising the land, spraying, cutting the hay, turning and spreading, rowing up, baling and removal. The video evidence suggested that most of these processes would take place within a day although I acknowledge that many of the processes would be weather dependent. Even making allowance for the weather disrupting some processes, the plant shown in the video evidence would not be found on the track for much more than 7 – 14 days per year.
58. For most of the year it is unlikely that pedestrians would encounter large agricultural machinery on the proposed path. A more likely encounter may be with one of Network Rail's vehicles when access to the railway was required or with one of Mr Fayers domestic vehicles. With regard to his personal use, Mr Fayers could offer no estimate of the frequency with which he used the track. The level of vehicle movements which pedestrians may encounter between points G and C are likely to be no greater than those experienced on footpaths 7 and 38 which run over the main access track to Ravens Farm.
59. Although users of the proposed footpath would be exposed to some risk from agricultural and other vehicles using the access track, on the evidence before me, such usage would be limited both in absolute numbers, frequency and duration and is unlikely to present any greater exposure to risk than a pedestrian would run on other similar footpaths in the vicinity.
60. The proposed alternative footpath would be subject to limitations in terms of headroom at the culvert, temporary flooding of the path in the culvert in extreme weather and possible encounters with agricultural vehicles on the access track. Despite these limitations, the proposed alternative would be suitable for use by the public and would provide users with a safe means of crossing the railway without having to cross the rails at grade.

Willow Walk

61. The crossing at Willow Walk, the whole of footpaths 6 and 36 and any unrecorded rights on the alternative path through the woodland to the rear of

Valley House will be extinguished under Order B; no alternative is proposed as a replacement for the Willow Walk crossing.

62. The crossing has been unavailable for use since 2011, however there is no evidence before me of complaints about the unavailability of the footpath having been made to the Council. The extinguishment of the crossing and associated footpaths would mean that anyone who wished to cross the railway at this point would have to take an alternative route.
63. The available alternatives would be via the footpath to be created by the diversion of Gipsy Lane crossing or to cross under the railway at the underbridge on Hawks Mill Street. Either of these routes would present a means of crossing the railway without having to navigate over the rails.
64. The route along Hawks Mill Street would require a user to negotiate a flight of steps which takes the elevated footway to the road passing under the bridge or to walk along the carriageway avoiding the footway and steps. Hawks Mill Street is narrow and generally has cars parked along its north-western side. The speed of vehicular traffic is regulated by the characteristics of the road and the restricted width of the bridge over the Gipping near Hawks Mill whilst the restricted height of the railway bridge limits the use of the road to light vehicles. I walked along Hawks Mill Street to footpath 7 on several occasions during my time in Needham Market; although there is a degree of risk in walking at the side of a carriageway, the speed at which vehicles passed along the road was not disconcerting. It has to be noted that anyone wishing to walk to footpath 7 from Needham Market via Hawks Mill Street will be accustomed to the conditions along the road.
65. Although the route along Hawks Mill Street presents accessibility issues, this route would be no less accessible than the crossing at Willow Walk which was served by stiles and a flight of steps either side of the railway embankment; any user who could have negotiated the Willow Walk crossing is unlikely to find difficulty in walking along the route along Hawks Mill Street.
66. The routes via Hawks Mill Street and via the Gipsy Lane diversion would provide a means by which those pedestrians can access the public rights of way network in the Gipping valley to the north of the railway. Neither route would expose users to an unacceptable degree of risk and can be considered suitable and safe for use by those who would have used the Willow Walk crossing.

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

67. The proposed route via the culvert would increase a journey to point C from the southern end of Gipsy Lane by approximately 470 metres. The predominant use of the crossing is for recreational purposes. No evidence was presented which suggested that recreational users would be inconvenienced by this increase in journey distance.
68. The crossing is on the fringe of the built-up part of Needham Market with the onward footpaths crossing undeveloped agricultural land. The diversion would not have any material impact upon the enjoyment to be derived from a walk along the footpath. Views over the surrounding landscape would remain

broadly the same and the opportunity to walk close to a minor river and the wildlife present may add interest to recreational users.

69. Whilst the relocation of the footpath on the farm access track may pose some risk to pedestrians through the movement of vehicles, the evidence I heard was that the track is not subject to extensive or frequent vehicular use. The access track is 3 metres in width and is unenclosed; there would be enough space adjacent to the track to provide refuge for pedestrians if necessary. I consider that the limited risk of conflict with vehicular use of the track is unlikely to inconvenience path users.
70. Periodic flooding of the proposed path is likely to cause some inconvenience as it would render the footpath unavailable. However, the model developed by WSP suggests that in an average year, the proposed path is likely to be flooded for less than 6 hours and there may be some years where the path would not flood. Given that onward paths are likely to be flooded by the Gipping during the same rainfall event, the temporary unavailability of the path within the culvert is unlikely to substantially inconvenience path users. Network Rail propose to install signage at the culvert to inform users of the potential for the path to flood.
71. The provision of a step-free footpath with ramped access at gradients of 1:20 is likely to be as convenient for users of the Gypsy Lane crossing and more convenient for those who could not negotiate the stiles and steps at Willow Walk. 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.
72. Overall, I consider that the proposed diversion would be reasonably convenient to users of footpaths 39, 6 and 36 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 Stowmarket Road towards the Gipping valley; any minor inconvenience to users of the re-alignment of these footpaths will be countered by the reduction in risk in crossing the railway via the diversion route.

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

73. Network Rail's view is that risk to pedestrians posed by the crossing at Gypsy Lane can be best mitigated if that risk is removed altogether by the closure of the at-grade crossing and its replacement by a path passing under the railway via the culvert.
74. Following the accidental fatality at the crossing in 2011 down line speeds have been restricted to 50mph via a TSR to provide enough sighting time for anyone wishing to cross the railway. Network Rail submit that a conversion of this TSR to a permanent speed restriction would be contrary to its operating licence and would be opposed by train operators; the existence of the TSR currently requires Network Rail to provide compensation to train operators for the delay to services caused by the down line trains (both passenger and freight) not being able to run at line speed.
75. Mr Kenning's evidence regarding the introduction of a miniature stop light (MSL) system at Gypsy Lane was that a 'stand-alone' or 'overlay' MSL system

- could not be installed due to the proximity of Needham Market station and the need to provide a consistent and uniform warning of the approach of trains irrespective of whether that train had stopped at Needham Market or was a through passenger or freight train.
76. In such circumstances, an MSL system would be required to be integrated with the signalling along the line and which would require the repositioning of some signals and the conversion of some from three aspect to four aspect operation to provide a uniform warning time to pedestrians wishing to cross at Gipsy Lane. Mr Kenning's estimate of the likely cost of this operation was £2.2 million pounds. Although an integrated MSL system would mitigate the risk to the public present at Gipsy Lane, it would not prevent use of the crossing and the risk to the public of accident would remain.
77. Mr Crosby noted that a system of warning lights had been installed at the crossing around 2014 but had since been removed. I heard that this was a system known as 'Wavetrain' which had been trialled and which relied upon the acoustic pattern generated in the rails to trigger the warning of the approach of a train. Wavetrain was found not to be a suitable mitigation at Gipsy Lane due to the proximity of the station, stopping and non-stopping trains and the variable characteristics of goods trains using the line.
78. Whistle boards provide some mitigation to the crossing but are not effective during the NTQP. Covtec would provide a local audible warning during the NTQP but is not failsafe and would not be mitigation enough to justify removing the TSR on the down line.
79. Given that at a maximum permissible train speed of 100mph there would still be an attendant risk to pedestrian safety at Gipsy Lane crossing even if integrated 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.
80. Consideration had been given to the provision of a ramped footbridge or a ramped underpass in the vicinity of Gipsy Lane crossing. These proposals were the subject of engagement with the local community as regards the design of a possible alternative to the crossing. The evidence regarding the consultation and engagement exercise shows that the Order proposals were the preferred option of the community within Needham Market. 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 proximity of existing infrastructure that can carry pedestrian traffic.
81. As noted above whistle boards do not provide mitigation at Willow Walk against the approach of line speed trains on the up line as those boards need to be located beyond the permissible distance of 420 metres. The limitations of an integrated MSL system, Wavetrain or Covtec would also be applicable at Willow Walk as they are at Gipsy Lane. Given that there have been no complaints about the unavailability of Willow Walk over the past 8 years, the provision of a footbridge or tunnel at this location would not be a reasonably practicable solution given the lack of demand for the footpath to be made available.
82. Overall, I conclude that possible improvements to the either crossing could not be said to be reasonably practicable.

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

83. Access to Willow Walk crossing has been prevented by the removal of the crossing infrastructure and by the erection of a new boundary fence.
84. On the day Order A becomes operative, Network Rail will padlock the kissing gates at Gipsy Lane crossing and securely fence the crossing as soon as possible thereafter to prevent trespass onto the railway. 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.
85. I have no reason to doubt that adequate arrangements have been made to secure the redundant crossings.

Other matters

86. Both Mr & Mrs Fayers and Mr Crosby raised concerns regarding the impact of the diversion upon agricultural activity on the bottom field and upon a safe escape route from Ravens Farm during flood events on the Bat and Gipping rivers. It was contended by the objectors that the diversion of the footpath to the access track would adversely affect agricultural activity on the bottom field; the erection of a fence to the north of the track would hinder the vehicles used in the cultivation of the hay crop and the turning head modelled by WSP had been based on smaller machinery which the contractor no longer used. Larger machinery would be unable to turn in the area designated; this would prevent the cultivation of the field and the loss of any income generated from it.
87. The model developed by WSP was based on the swept path of machinery of the type in use on the Fayers' land when the planning application was made for the construction of a path within the culvert. The model was also developed on the basis that at that time, a fence to the north of the track was in place which did not appear to impact upon the ability of machinery to access and exit from the field. I understand that the fence had been erected by Network Rail as a protective measure whilst other works in association with the railway were being carried out. As the Fayers' questioned the reason for a gap to be left at point C (as per the Council's original request for a modification) it is by no means certain that a fence along the north side of the track will be required. If no fence is erected, then agricultural machinery (of whatever size) will not have difficulty in accessing the field from the track. If a fence is required for the future protection of the land, it would be possible for the existing model to be recalibrated to account for increased machinery size and the position of access gates and turning heads to be adjusted accordingly.
88. As noted above, the agricultural activity on the bottom field appears to be limited to the cultivation of a hay crop. In his evidence Mr Fayers described with the aid of video taken this year of the various processes involved in the cultivation of that crop, although he could not give an answer as to how long each process would take. The bottom field is of a moderate size and it is unlikely that each of the processes identified would take more than one day to complete if weather conditions were favourable.
89. It does not appear that access to the field would be a problem if the footpath were to run along the access track and the number of days on which pedestrians may encounter the movement of large vehicles would appear to be

few. Mrs Fayers gave evidence that the 'buffer strip' around the field commenced on the north side of the track as the hard-surfaced track could not be part of any buffer strip. The diversion of the footpath onto the track would not therefore have any impact upon that part of the field available for cultivation as the position of the buffer strip would be unaffected. Furthermore, the buffer strip would separate users of the footpath from any herbicides being sprayed within the bottom field and would reduce any risk of drift onto the footpath or the likelihood of the footpath needing to be closed when such operations are undertaken.

90. As regards the other agricultural activities on the field, Mrs Fayers' evidence was that 10 sheep were kept at the property along with two Gloucester Old Spot pigs; none of the livestock were kept for meat and the sheep were not kept for their fleece. From this it would appear that animal husbandry is of a type more akin to a hobby as opposed to a commercial enterprise. Part of the bottom field is also maintained as a football pitch complete with goalposts. The footpath is unlikely to materially impact upon these activities.
91. In such circumstances, it is unlikely that the diversion of the footpath would have any substantial impact upon the ability to gain a hay crop from the bottom field. If a fence is required to the north of the track for the protection of the few animals being kept, it would be possible to incorporate within it suitable access points for the type of machinery brought onto the land by the person involved in the cultivation of the hay crop. Any adverse impact upon the Fayers' landholding would in any case be the basis for a claim for compensation under section 28 of the 1980 Act.
92. The Fayers' contend that the closure of Gipsy Lane crossing would remove the only dry and safe means of exit from Raven's Farm in time of severe flooding. They point out that all other potential exit routes lie within flood zones 2 and 3 and would be flooded to a greater or lesser extent depending on the intensity and duration of the flood event. It was essential for a dry and safe means of escape to be maintained; the proposed footpath would not serve that purpose as it would not be dry year-round.
93. Mr Crosby submitted that in 2012 during a 1 in 30-year flood event, the connecting paths from Ravens Farm to the Gipping valley were flooded as was part of the vehicular access to Hawks Mill Street; the only route leading from Ravens Farm which did not flood was the crossing at Gipsy Lane.
94. The analysis of the published data from the Environment Agency shows that Raven's Farm does not lie within flood zones 2 or 3; Network Rail's conclusion was that in a 1 in 100 year flood event, Ravens Farm would not flood – in such an event the farm would be a place of safety and it would be possible for residents to stay put. It was acknowledged that in most flood events, the proposed footpath through the culvert would flood, however, there were four potential escape routes for residents which had been analysed in relation to the Environment Agency's flood zone mapping and the 1 in 100-year flood event predictions for the Bat.
95. Mr Smith's evidence on this matter was that the Environment Agency's published mapping was based on composite data gained from various sources and assumed simultaneous rainfall over the whole of the catchment area; this was considered highly improbable as peak flows in each river course were likely to be reached at different times. Mr Smith's analysis was that the current

- vehicular access track to Hawks Mill Street was on the extreme edge of the flood plain and only parts of it would flood in the most extreme events. His conclusion was that the access track would remain accessible if care was used for most of the duration of the flood event. This appears to be supported by Mr Crosby's evidence of having been able to make his way on foot along that part of the track that had flooded in the 1 in 30-year flood event of 2012.
96. Mr Smith also noted that the Environment Agency provided a flood warning service for the Gipping valley and that residents at Ravens Farm would be able to access advance warning of flood events with adequate time to safely evacuate the property if the house was at risk.
97. Consideration was also given to a means of exit along the access track parallel to the railway which runs to bridge 274. The WSP model suggests that the private bridge over the Bat would remain dry in a 1 in 100-year event; in a 1 in 20-year event the private track would not be flooded whereas in a 1 in 50-year event or greater there would be some flooding north of the bridge but that would present a very low hazard. In Mr Smith's analysis, exit from the property via bridge 274 would be possible even in the most extreme events.
98. Although the Fayers can access bridge 274 from their property they do not have a right of way over the track which provides a connection between it and Stowmarket Road. Although it was submitted on behalf of Network Rail that trespass over the track in times of necessity could be justified, the footnote to the cases cited in support states that "*the defence of necessity is not favoured by the courts, especially where the defendant acted to protect a private rather than a public interest*". It would not be appropriate for the Fayers to have to engage in a dispute with the owner of the track about the necessity of trespass at a time when they may be seeking refuge from an extreme flood event.
99. The fact remains however, that according to the current published data, Ravens Farm is outside the predicted flood zones 2 and 3. In such circumstances, it would not appear necessary for the Fayers to be seeking escape via bridge 274 in any case. If the flood warnings provided by the Environment Agency were such that there was a potential risk to the buildings at Ravens Farm, then precautionary steps could be taken to exit via the existing vehicular access to Hawks Mill Street in enough time before flood waters reached the buildings.
100. Whilst Mr and Mrs Fayers submit that the proposed diversion would deprive them of a safe, dry means of exit from their property, they do not benefit from any private right of way over Gipsy Lane crossing, having surrendered such rights some time ago. Although the opportunity to use the public right of way over the railway as a means of emergency egress can be weighed in the balance when considering whether it is expedient to divert footpath 39, the weight to be attached to that matter is lessened by the fact that the vehicular access to Ravens Farm is unaffected by the proposal and by the fact that the buildings at the property are predicted to remain dry even in the most extreme of flood events. Consequently, I attach little weight to this issue.
101. Other matters raised by Mr & Mrs Fayers such as the potential for ongoing maintenance costs associated with any fencing erected to the north of the track, increases in public liability insurance and the possible movement of the mains water stop cock to the north side of the railway are matters which, if

realised, would be the basis for a claim for compensation under section 28 of the 1980 Act.

102. Network Rail submit that the existence of the TSR on the down line materially affects the operation of the railway, delaying journey times for passengers between London and Norwich. Freight trains running over the crossing are also subject to the TSR as it is lower than the permissible line speed for such trains. The diversion of footpath 39 and the extinguishment of footpath 36 are likely to result in wider benefits to train operators and the travelling public as trains will be able to run at full line speeds.
103. Although not a principal factor justifying the closure of the crossings, costs savings would accrue to Network Rail in terms of future maintenance of the crossings and any potential upgrades which may be required. The closure of the crossings would also permit the removal of the protective whistle boards and remove a source of noise pollution within the vicinity of Needham Market.
104. Overall, and having regard to all the circumstances associated with the crossings at Gipsy Lane and Willow Walk, I consider that it is expedient to confirm the Orders.

Conclusions

Orders A and B

105. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that Order A should be confirmed with modifications that do not require advertisement and that Order B should be confirmed.
106. As noted above, a possible route for the Gipsy Lane diversion adjacent to the railway boundary fence had been a matter of discussion between the parties at a site visit on the 4 June. No agreement was reached as regards that alternative route. I have given consideration to the proposed diversion as set out in Order A, and having concluded that the statutory tests found in section 119A are satisfied in relation to the route set out in the Order, I have not given consideration to whether a route adjacent to the railway fence would or would not satisfy those same tests.

Formal Decision – Order A

107. I confirm the Order subject to the following modifications:
108. (a) in Part 2 of the schedule describing Creeping St Mary Footpath 39 at line 2 replace 'staggered barrier' with 'kissing gate'; (b) under Limitations and Conditions replace 'staggered barrier' with 'kissing gate'.

Formal Decision – Order B

109. I confirm the Order

Alan Beckett

Inspector

APPEARANCES

For Suffolk County Council and Network Rail:

Mr R Turney of Counsel, instructed by Womble Bond Dickinson

Who called:

Mr S Kerr Definitive Map Manager, Suffolk County Council

Mr D Fisk Route Level Crossing Manager (Anglia), Network Rail

Mr A Kenning Senior Project Engineer (Signalling), Network Rail

Miss P Cuthbertson Associate, WSP

Mr A Smith Associate Director, WSP

Mr P Clark Associate (Transport Planning), WSP

Interested party in support:

Mr B Hall Chairman, Suffolk Local Access Forum

In objection:

Mr M Fayers Landowner

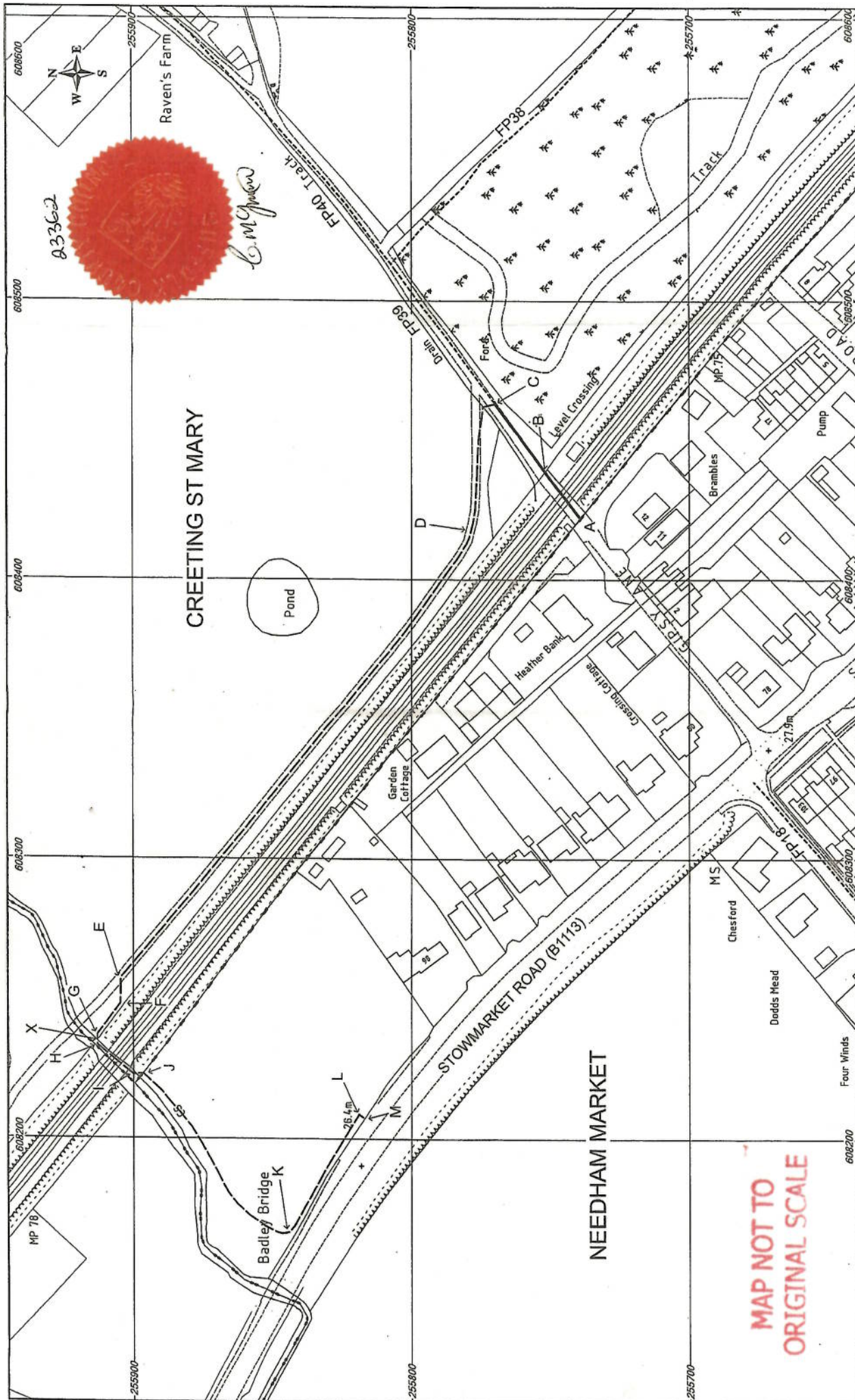
Mrs M Fayers Landowner

Mr A Fayers Landowner

Mr G Crosby Local resident

Inquiry documents

1. Errata sheet for Mr Fisk's proof of evidence.
2. Redacted copy of the funding agreement between Network Rail and Suffolk County Council.
3. Un-redacted copy of the funding agreement between Network Rail and Suffolk County Council.
4. Statement made on behalf of Suffolk Local Access Forum by Mr Hall.
5. Copy of email correspondence between Mr Day of Network Rail and Mr M Fayers regarding an alternative route with plans.
6. Errata sheet for Mr Clark's proof of evidence.
7. Errata sheet for Miss Cuthbertson's proof of evidence.
8. Summary data from level crossing traffic census, Gipsy Lane, July 2015.
9. Summary data from level crossing traffic census, Gipsy Lane, December 2016.
10. Email between Environment agency and Mr Fayers dated 23 September 2019.
11. Opening submissions on behalf of Suffolk County Council and Network Rail.
12. Confirmation of posting of statutory notices.
13. Video evidence of hay cultivation process.
14. Closing submissions from Mr Crosby.
15. Closing submissions on behalf of the Fayers family.
16. Closing submissions on behalf of Suffolk County Council and Network Rail.



Director of Growth, Highways and Infrastructure
Endavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX.


Scale 1:1250 @ A3

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Proposed Public Footpath (C - D - E - F - G - X - H - I - J - K - L - M)
Public Footpath to be diverted (A - B - C)
Unaffected Public Footpath
Parish Boundary

PROPOSED RAIL CROSSING DIVERSION OF
CREETING ST MARY FOOTPATH 39 (PART)
HIGHWAYS ACT 1980 SECTION 119A



**Suffolk
County Council**
Director of Growth, Highways and Infrastructure
Endeavour House, 6 Russell Road, Ipswich, Suffolk, IP1 2BX.

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Public Footpath (A - B - C - D - E) and
Unrecorded Public Footpath (D - F) to be extinguished

Existing Unaffected Public Footpath

Parish Boundary

**PROPOSED RAIL CROSSING EXTINGUISHMENT
OF NEEDHAM MARKET FOOTPATH 6,
CREETING ST MARY FOOTPATH 36 AND
UNRECORDED FOOTPATH RIGHTS -
HIGHWAYS ACT 1980 S118A**