



## Order Decision

Inquiry opened on 16 October 2019

Site visits made on 16, 22, 24 October 2019

**by Martin Elliott BSc FIPROW**

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

**Decision date: 27 December 2019**

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### Order Ref: ROW/3217265

- This Order is made under Section 118A of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the The Dorset County Council (Footpath 14, Wool at East Burton) Rail Crossing Extinguishment Order 2018.
- The Order is dated 16 March 2018 and proposes to extinguish public footpath 14 in the Parish of Wool as shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the extinguishment come into force.
- There were four objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to modifications.**

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### Procedural Matters

1. I opened a public local inquiry at East Burton Village Hall on 16 October 2019. The inquiry sat for six days. I did not carry out an accompanied site inspection as no parties required me to do so. However, I carried out a number of unaccompanied site inspections of the Order route and surrounding area.
2. Dorset Council took a neutral stance with respect to the confirmation of the Order and the case for confirmation was made by Network Rail (NR). Although the Parish Council indicated that they wished to speak at the inquiry, in opposition to the Order, they did not do so. In reaching my decision I have regard to all submissions made in respect of the Order.
3. Complaints were made prior to the inquiry<sup>1</sup> in relation to the conduct of NR. It was asserted that NR, given Dorset Council were taking a neutral stance, failed to comply with the timetable for the submission of Statements of Case (SoC). This despite being advised by the Planning Inspectorate that NR should submit their SoC as if they were the Order Making Authority (OMA). It was contended that objectors were put at a disadvantage as they only saw the primary case for NR after the submission of their own SoC.
4. In cases where the OMA is taking a neutral stance the supporter of the Order (in this case NR, the applicant) is encouraged to submit a SoC by the deadline set out in the Notice of Order for the OMA. In this case NR submitted their SoC in accordance with the deadline for those who have made objections, representations or wish to speak at the inquiry.

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<sup>1</sup> Open Spaces Society (OSS), Ramblers' Association (RA) and Professor Divall

5. Although it would have been helpful for NR to have submitted their SoC at the time when the OMA were required to submit their SoC there is no mandatory requirement to do so. In this case the parties concerned were able to submit rebuttal proofs having had sight of NR's SoC. The issue to be considered is whether there has been any prejudice and whilst I note the concerns there is nothing to suggest that anyone has been prejudiced. The parties concerned were able to make further submissions in response to NR's SoC. It is also noted that NR only submitted summary Proofs of Evidence shortly before the inquiry. Again there is nothing to indicate that anyone has been prejudiced by their late submission.
6. The Order route has no recorded width. In the absence of a width and to ensure, in the event of confirmation, the whole width of the Order route is extinguished it is appropriate to include the words 'the whole width'. The Order, if confirmed, will be modified accordingly.

### **The Main Issues**

7. The Order has been made under Section 118A of the Highways Act 1980 because it appeared to Dorset Council expedient in the interests of the safety of members of the public using it or likely to use it that the footpath should be stopped up.
8. Before confirming the Order I must be 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.
9. Defra<sup>2</sup> Circular 1/09 (the Circular) (at paragraph 5.49) advises that all the relevant factors should be taken in to consideration, which may include the use currently made of the existing path, the risk to the public of continuing such use, the effect that the loss of the path would have on users of the public rights of way network as a whole, 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.
10. Paragraph 5.48 of the Circular informs that care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway. Section 118A(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way.

### **Reasons**

#### ***Background***

11. The railway line (the Bournemouth main line/Wessex route) on which the crossing is located was authorised by the Southampton and Dorchester Railway Act 1845. The crossing falls within enclosure 41 in the Parish of Newburgh and the Book of Reference describes the enclosure as an Occupation Road. The

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<sup>2</sup> Department for Environment Food and Rural Affairs

crossing was therefore originally provided as a private access. A public footpath was subsequently recorded over the crossing under the National Parks and Access to the Countryside Act 1949. All private access rights were released in 1965.

12. The line, runs between London Waterloo and Weymouth. Footpath 14 (A-D<sup>3</sup>), which links East Burton Road to footpath 13 uses the crossing (B-C) known as 'Darkies' (the crossing). The 'Up' line carries trains from Weymouth towards Poole and London and is the northernmost pair of rails. The 'Down' line taking trains from London and Poole is the southernmost pair of rails. The line speed at the crossing is 85 mph on the up line and 80 mph on the down line. The lines running over the crossing are in 24 hour use with 68 passenger services, Monday to Saturday, 06:17 to 23:59 hours, with 31 passenger services on a Sunday between 08:10 and 23:20 hours. There are three pathways for freight trains between 21:35 and 00:20 hours, Monday to Friday, although currently there are no freight trains running over the crossing. Other services run on an unscheduled basis such as heritage trains, empty stock and engineering trains.

### **Safety at the crossing**

#### *Sight lines*

13. Darkies is a 'passive' crossing meaning that there is no direct method of warning people who use the crossing. Stop, Look and Listen (SLL) signs are the only warning at the crossing. These are regarded as being at the decision points for the crossing; the point at which a user determines whether it is safe to cross. At an anticipated walking speed of 1.2 m/s the crossing time between safe locations (9.6 metres) is 8.07 seconds for an able-bodied pedestrian (neither encumbered or vulnerable (non-vulnerable user)). For an encumbered or vulnerable user (vulnerable user) the traverse time is increased by 50% (the 50% safeguard) at 12.11 seconds.
14. NR have calculated the minimum sighting distance, using the NR sighting requirements calculation tool. On the basis of those measurements, line speeds and the time required to traverse the crossing NR have concluded that in respect of non-vulnerable users using the crossing from B to C the sighting distance of a downline train (sight line B (SLB)) is deficient. The sighting distance being only 210 metres with a minimum sighting distance required being 289 metres and therefore deficient by 79 metres; the sighting distance provides a warning time of 5.87 seconds. In respect of the other sight lines NR have concluded that these are sufficient to allow time to cross the crossing. Professor Divall agreed with NR that with the exception of SLB the warning times provided are compliant for non-vulnerable users. It should be noted that irrespective of whether use is by vulnerable or non-vulnerable users SLB is deficient in terms of affording a safe crossing.
15. Professor Divall queried the accuracy of the measurement for SLB being based on a measurement using lineside vegetation. He said that it could not be certain that the feature used equated to a train coming around the corner. Whilst I note the concerns, the measurement has been taken in accordance with industry practice. Although there has been some variance in the previous measurements taken by NR I do not consider that this means that the 210 metres is inaccurate. In any event Professor Divall accepted in cross-

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<sup>3</sup> Letters A to D relate to points shown on the Order map

examination that SLB was about 210 metres, did not question the methodology and as noted above agreed that SLB was deficient.

16. Professor Divall contended that in terms of SLB this is restricted by trackside vegetation on the inside curve on the up side. It is suggested that if vegetation was cleared in accordance with the industry standards it was possible to make SLB compliant. He fairly accepted that he could not say if NR were not meeting the required standard for vegetation clearance. He nevertheless questioned if NR were doing all that is reasonably practicable to improve SLB. However, Mr Pead was clear that even if the vegetation could be cut back on 365 days of the year the limitation on the sight line was in consequence of a permanent structure (an embankment) and the curvature of the track. There is nothing before me to suggest that NR are not complying with their responsibilities in respect of vegetation clearance or that SLB would be any different in the absence of any vegetation.
17. Professor Divall referred to early findings of T984<sup>4</sup> that showed that pedestrians using crossings do not behave typically in the way assumed. It was stated that pedestrians decide for themselves when and where to check for trains. The concept of decision points should be replaced with decision paths as the decision to cross is not taken at a specific point.
18. Whilst I note the findings, the decision point is taken as 2 metres from the rail and is identified by the SLL sign. I would acknowledge that those using the crossing will continue to check for trains as they cross. However, the evidence from Mr Pead is that the decision path does not apply at the crossing as the decision to cross is from a position of safety. Any decision taken beyond that point falls within the 'Danger Zone' where crossing users are less likely to step back. It was in his view necessary to apply objective procedures.

#### *Train speeds*

19. It is suggested that NRs evidence on warning times relies heavily on theoretical assumptions on matters such as train performance. In respect of the crossing times this is based on the track line speeds set out at paragraph 12 above.
20. In terms of actual train speeds on the down line at the crossing the evidence of NR is that for those trains stopping at Wool Station<sup>5</sup> a speed of 67 mph could be attained by the time the crossing is reached. A speed of 67 mph gives a user a warning time of 7.01 seconds and this is still lower than the required minimum time of 8.07 seconds for a non-vulnerable user. For a vulnerable user the warning time will be 12.11 seconds and again is deficient by 5.1 seconds.
21. For trains which do not stop at Wool Station<sup>6</sup>, all of which have to adhere to the Permanent Speed Restriction of 60 mph through the station, a train will have attained the speed of 74 mph by the sighting point, and will still be accelerating, with the capacity to reach a speed of 76 mph by the time the crossing is reached. Based on the speed of 74 mph the sighting time will be 6.35 seconds and is therefore deficient by 1.72 seconds for the non-vulnerable user. In terms of a vulnerable user the deficiency will be 5.76 seconds. Given

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<sup>4</sup> Research into the causes of pedestrian accidents at level crossings and potential solutions (Rail Safety and Standards Board (RSSB))

<sup>5</sup> 22 trains each weekday, 22 on Saturday and 15 on Sunday

<sup>6</sup> 7 trains each weekday, 12 on Saturdays and 1 on Sundays

that a train will still be accelerating the sighting time will be reduced further and is estimated to be 6.18 seconds. This is only a very small reduction in the sighting time but in any event is deficient both for the non-vulnerable user and the vulnerable user.

22. Given the above whilst trains on the down line may not be travelling at line speed their speed will still mean that the crossing from B to C is non-compliant for both stopping and non-stopping trains.
23. Professor Divall questioned whether the warning times estimated by NR corresponded to actual warning times at the crossing. His 'rough and ready' lineside observations suggested that warning times from the upside decision point are significantly longer than the theory suggests. His estimate was that no train took less than 9 seconds. Mr Pead acknowledged Professor Divall's estimates but he explained that in assessing the crossing it was necessary to produce an objective repeatable process and the timing was a result of a calculation. He pointed out that even at 9 seconds the crossing remained non-compliant; this will be the case for vulnerable users. In my view some weight should be given to the assessment carried out by NR carried out in accordance with an objective and repeatable process as opposed to a 'rough and ready' calculation.

#### *Passing trains*

24. NR contend that passing trains import a further risk and the evidence to the inquiry demonstrated the potential risks arising from such a scenario. Indeed it does not seem to be disputed that passing trains are potentially a hazard. Mrs Thorpe gave evidence of an incident arising from passing trains at the crossing.
25. Whilst passing trains pose a risk to users the evidence as to passing trains at the crossing is limited and it does not appear that NR place any great reliance on this risk. Although it is possible that trains do pass in the vicinity of the crossing NR provide no qualitative or quantitative assessment and it is difficult to put any significant weight on this potential risk. Nevertheless passing trains will pose a risk to crossing users.

#### *Variation in train speeds*

26. NR say that a person's judgement of speed is intuitive and often based on their daily experience of road vehicles. It is suggested that this can give a highly inaccurate perception of the speed of an approaching train in an environment where there are not the usual markers. Whilst the evidence indicates that train speeds will vary over the crossing NR do not specifically state whether this has significant implications in respect of the crossing. However, given the variation in train speeds this may have some safety implications.

#### *Whistle Boards*

27. As the sighting at the crossing is not sufficient to provide a suitable warning of an approaching train whistle boards are located on the approach to the crossing. In respect of the downside line the whistle board is placed at 400m from the crossing. NR Guidance in respect of the location of whistle boards indicates that the maximum distance for a whistle board to remain effective is 400m(+/-10%). The distance of the whistle board is calculated on the basis of

- the speed at which sound travels versus the speed of the train and is not related to the sighting of trains.
28. NR advise that the whistle boards mitigate the risk from deficient sighting. Nevertheless it is said that their effectiveness can be questioned as this is reliant on the driver to sound the horn and the users ability to hear the horn which can be reduced by ambient noise or even a passing train.
  29. It is acknowledged that drivers do sometimes fail to sound horns at all or in the correct place<sup>7</sup> accepting that train drivers will be qualified to work on any particular route and should reasonably be expected to apply the horn at appropriate points. In terms of ambient noise, whilst this may present a problem, I have no evidence that this is an occurrence at the crossing although it is not disputed that on occasions the ambient noise may reduce the effectiveness of whistle boards.
  30. Bearing in mind the above, whilst the whistle board on the downline mitigates the deficiency in SLB there are some limitations as to its effectiveness.
  31. In the Night Time Quiet Period (NTQP) between midnight and 06:00 hours trains do not sound their horns unless they see a person at an unlit crossing. As such there will be no additional protection from whistle boards. I note the comment of NR that the users sighting of a train will be impaired by darkness but trains have high intensity headlights which will identify the presence of an oncoming train. Nevertheless I would acknowledge that whistle boards do not provide the same levels of protection in the NTQP. I note the suggestion that use of the crossing will be lower during the NTQP. However, the risk to the individual using the crossing will remain.
  32. In respect of vulnerable users any whistle board would need to be positioned at 484 metres. This is clearly further away from the crossing than guidelines allow and any whistle board at this distance would not provide mitigation.

#### *Vulnerable users*

33. It is NRs case that the definition of vulnerable use is not conclusive in respect of the Order as the crossing is non-compliant for non-vulnerable users; it follows that the crossing is also non-compliant for vulnerable users. NR acknowledge that no users of the crossing have been recorded who have difficulty in walking because of stiles which restrict such use; use is also restricted for wheelchair users and those with prams. However, the term vulnerable user is not restricted to those with impaired mobility and may include children or older children in groups, those using headphones and wearing clothing which might obstruct vision (e.g. hoodies). Users may also be those who are 'encumbered' who may be classed as vulnerable because they may be carrying bags or may be walkers with dogs on or off the lead.
34. The Census Good Practice Guide (inquiry document 5) identifies those with vulnerabilities and provides an illustration as to whether the 50% safeguard should be applied. However, the guidance makes it clear that it is for the assessor to decide whether the 50% safeguard should be applied to protect any minority user group or single person. Even where the vulnerable use falls below the majority of users it is open to the assessor to have regard to such use. Professor Divall acknowledged in cross-examination that it was open to

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<sup>7</sup> Office of Road and Rail (ORR), Health and Safety Report 2016-17 (July 2017) para 37

Mr Pead to conclude that the majority of use of the crossing is by vulnerable users.

35. NR carried out a census at the crossing (July 2019) when it was observed that the crossing was used by both the young and elderly as individuals or in groups. Such users are categorised as being vulnerable. No evidence is before me that the crossing is used by vulnerable users such as those wearing headphones or hoodies. It is also acknowledged that the 2018 Narrative Risk Assessment (NRA) makes no reference to vulnerable users other than dog walkers and the recent census (July 2019) identifies this use as 54% of total users. A census carried out as part of the 2018 NRA showed that at that time some 40% of dogs were off the lead when using the crossing. Although there are no figures as to the percentage of dogs off leads in the July 2019 census there is nothing before me to suggest that this percentage will have changed. It is more likely than not that the percentage has not changed significantly. Whilst there is no data as to the number of vulnerable users, other than those with dogs, the 54% figure relating to users with dogs clearly shows use by vulnerable users and it is appropriate to apply the 50% safeguard.
36. The table in the Good Practice Guide identifies circumstances where dog walkers are not normally considered vulnerable, namely when they are observed using the crossing correctly and safely whilst keeping dogs on leads and under control. I do not accept that the circumstances where dog walkers are not normally considered vulnerable could only apply when all users are to be observed to be using the crossing in the identified manner. I recognise that a further survey as part of the 2018 NRA showed that dog walkers were using the crossing safely and correctly. Nevertheless the 2018 NRA identifies 40% of dog walkers had dogs off their leads and therefore vulnerable. Applying the guidance it is open to the assessor to apply the 50% safeguard.
37. Bearing in mind the above and noting the crossing times identified at paragraphs 13 and 21 above, notwithstanding the fact that the crossing is non-compliant (SLB) in respect of non-vulnerable users, the crossing is also non-compliant in respect of vulnerable users. Although there is some criticism as to the assessment by NR it was carried out in accordance with the Census Good Practice Guide. Some weight should be given to the conclusions reached in accordance with such guidance.

#### *Pedestrian behaviours*

38. In opposition it was contended that whilst there were many patterns of behaviour which can increase the risks to pedestrians NR had failed to show that there was any pattern of deliberate misuse or misjudgements by pedestrians at the crossing. However, whilst NR outline that young people in groups exhibit more risky behaviour this was not a consideration at the crossing at present. The NRA 2018 indicates that those using the crossing did so safely and correctly and that there were no recorded incidents of misuse. Nevertheless NR anticipated that with further residential development in the area such behaviour was likely to increase. There is nothing to indicate that NR have relied on elements of risky behaviour in assessing the safety at the crossing in the 2018 NRA or subsequent assessment (paragraph 47).

#### *Supplementary Aids*

39. It is suggested by objectors that the position of the barriers at the Burton Road crossing and a signal on the down line (PW5627) can assist those using the

crossing. It may be the case that some who use the crossing use these two features to assist in determining whether it is safe to cross. However, as Mr Pead stated these features are unreliable and outside any regulatory guidance. Observation of the Burton Road crossing might be hindered by poor visibility. In respect of the signal the use of this may distract the crossing user from observing SLB and it is possible that a train could still be proceeding towards the crossing even if the signal were showing red. The use of this feature also relies on the crossing user understanding the operation of the signal. Professor Divall acknowledged that the signal could not be relied upon but thought that the signal was a useful aid.

#### *Quantitative Risk Assessment - All Level Crossing Risk Model (ALCRM)*

40. NR have undertaken a quantitative assessment of risk using ALCRM. The purpose of ALCRM is to provide a consistent method for assessing safety risks to crossing users, train passengers and train staff at level crossings on NR controlled infrastructure. The model has recently been reviewed by RSSB with respect to pedestrian risk and found to be robust. NR recognise that it provides a quantifiable risk score which allows comparison with other crossings and a ranking of risk. Professor Divall acknowledged that ALCRM is a sophisticated and powerful algorithm for modelling the dangers associated with any crossing. He also did not dispute the professional integrity and the expertise of those carrying out the assessments although noted some inconsistencies in the assessments.
41. To calculate risk ALCRM requires specific information about each asset. Information is gathered from existing records, stakeholder engagement and from a site visit. Features observed on site include aspects such as crossing orientation, census, users and the visibility of the crossing when approaching. The outputs of ALCRM enable NR to better identify hazards and risks at each crossing and to enable Level Crossing Managers to better select appropriate risk controls.
42. ALCRM reports two measures of risk. Collective risk is a measure of total harm, or safety loss, and is expressed in terms of Fatalities and Weighted Injuries (FWI) per year. Collective risk is reported in a simplified numeric form (1 to 13) where 1 represents the highest risk and 13 representing nil risk. The score is independent of crossing type. Crossings which are relatively busy with lower degrees of protection will receive the highest rankings. Conversely lightly used crossings with high levels of protection will receive lower rankings.
43. The second measure of risk is to the individual crossing user presented as an individual risk of fatality per year. ALCRM calculates this risk as the 'probability of fatality' and is expressed as a letter (A to M) with A representing the highest risk and M nil risk. Crossings with higher degrees of protection, such as manually controlled barriers will be grouped at the lower end (towards M) with less well protected crossings, such as footpath crossings, around the higher end (towards A).

#### *Qualitative Risk Assessment*

44. A qualitative risk assessment is applied by the Level Crossing Manager throughout the risk assessment process. Information to support the judgement is derived from a collation of evidence from a site visit, application

of local knowledge, smart intelligent sources, stakeholder engagement and analysis of previous assessments and accident/incident data.

#### *Narrative Risk Assessment*

45. The NRA is the means of presenting the output of routine level crossing risk assessments. The NRA adopts the quantitative risk and the qualitative commentary/observations recorded by the Level Crossing Manager in ALCRM.
46. The most recent NRA is January 2018 which provides a score of C6 (0.000278125 FWI). This is based on use by an average of 9 people a day (July 2018 census), no deficient sighting or vulnerable use and a line speed of 85 mph in both directions. The 2018 NRA ranked the crossing as the 58<sup>th</sup> riskiest crossing out of 151 on the Wessex route. However, NR recognised that the inadequacies of the 2018 NRA did not reflect the actual risk at the crossing. The NRA did not recognise that the crossing had deficient sighting or that the line speed varied.
47. NR have carried out an over-check risk assessment on the basis of a new census (July 2019) showing an average of 13 users a day, the actual sighting distance (SLB of down line trains being deficient) and a line speed of 80 mph on the down line and 85 mph on the up line. The assessment was based on there being no vulnerable users. The newly calculated score is C6 (0.000483334 FWI). A rating of C6 places the crossing at a medium to high risk. Although this updated rating does not form Part of an NRA it clearly provides an update to the 2018 NRA which, in part, no longer represents all circumstances relevant to the crossing.
48. I acknowledge the criticisms of NR in respect of the assessment of the crossing safety which I have considered above. However, some significant weight should be given to the assessment using a well-developed methodology carried out by those with the professional knowledge to carry out such assessments. Whilst there are some criticisms, there is nothing before me which fundamentally challenges the assessment carried out by NR. It should be noted that the risk score contained in the NRA 2018 has been subject to further scrutiny as a result of the inquiry and the risk score has been updated.

#### *Relative risk*

49. Professor Divall contended that the breakdown of the ALCRM score suggests that the risk to an individual falls within a range which the Health and Safety Executive and ORR regard as 'tolerable'. It is asserted that NR have not produced any evidence to show that using the crossing is intolerably dangerous when compared to similar activities allowed by British society.
50. I would acknowledge, as suggested by the OSS, that in everyday life we take risks and in using the crossing there is an element of risk. It may also be the case that the risk in using the crossing falls within what might be seen by some as tolerable within society with regard to certain common forms of transport. However, NR is under a duty (ultimately regulated and enforceable by the ORR and the Secretary of State for Transport) to operate the rail network efficiently and safely in accordance with its licence. Further, the ORR is responsible for the regulation of the railway industry in Great Britain and is the health and safety regulator for the rail industry. The ORR endorses the closure of level crossings where there is a risk to public safety and where there is no other viable option to sufficiently mitigate or reduce that risk. Mr Greenwood

informed the inquiry that whilst NR developed policies and practices the ORR maintained an oversight over NR. ALCRM itself had been developed between the Rail Safety and Standards Board (RSSB), NR and Arthur D Little since the 1990s with further extensive upgrading completed in 2018. The ORR are aware of the application by NR in respect of the crossing and support the proposal.

51. Whilst I note the comparative risks, in respect of the assessment of rail crossing safety, such an approach is at odds with approved and regulated industry practices. Some weight should be given to risk assessments carried out in accordance with objective standards, measurements and assessment tools which have been developed by the industry and are under scrutiny from the ORR. It is not a requirement that any crossing is intolerably dangerous for an Order to be made or confirmed under section 118A of the 1980 Act. The Order has been made because it is expedient in the interests of the safety of members of the public using or likely to use the crossing that the footpath should be stopped up. Circular 1/09 advises that consideration should be given to the risk to the public of continuing use. The safety interests need to be balanced against other factors as set out above.

*Conclusions on safety at the crossing*

52. Having regard to all of the above and the various submissions the ALCRM score indicates that the crossing poses a medium to high risk to pedestrians. It is of note that SLB is insufficient to provide a safe crossing time between points B and C for non-vulnerable users and vulnerable users. The updated risk score does not take into account the use of the crossing by vulnerable users, in this case dog walkers. If vulnerable users were taken into account then the risk score would increase. On the evidence before I conclude that the crossing poses a risk to the safety of members of the public using it or likely to use it such that the crossing is unsafe.

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

53. NR's overall funding is authorised for 5 year periods (Control Period – CP). For the current CP (2019 to 2024 CP6) NR has been authorised £34 billion from its regulator the ORR granted pursuant to a robust business plan. NR as a Government funded organisation is required to adhere to guidance in the Government Handbook 'Managing Public Money'. NR would need to justify any additional expenditure where other safer and more cost effective alternatives exist. In terms of the crossing it is likely that the ORR would refuse to allocate additional funding to provide an alternative to the crossing. If any alternative solution for the crossing were to be achievable then this would be at the expense of other committed projects. On the Wessex route there are currently a number of funded crossings to be provided with engineering solutions such as bridges and MSLs. These are crossings within the top 10% highest risk crossings with significant irremovable safety features where no viable alternatives have been identified.

*Footbridge*

54. A ramped footbridge would cost in the region of £2.5 million although a stepped bridge would cost less at £1.2 million. However, there is insufficient room to provide a ramped or stepped footbridge due to there being insufficient land within the operational corridor and the close proximity of neighbouring

residential properties. NR outlined the engineering difficulties in the construction of a bridge including the need for reinforced foundations due to the area being susceptible to flooding; the underground conditions were largely unknown and could result in delays and additional costs. There are also accessibility issues for crane access and the need for a compound. It was also unknown as to whether planning permission would be granted.

55. It is suggested in opposition that the Order should not be confirmed and that, in the light of the proposed development of the area, funding could be provided by a developer through a section 106 agreement<sup>8</sup>. However, although the adjacent area is likely to be developed there can be no certainty as to the funding of a bridge at its existing location, or at a point further west suggested by Mr Hook, through any Section 106 agreement or from any other funding source. Further, there is no evidence that the local planning authority would seek the construction of a bridge funded by a developer or that a developer would be prepared to fund such a project. In any event there are other constraints which would need to be overcome as outlined at paragraph 54 above as well as the implications for funding other projects in CP6.
56. Looking at the evidence as a whole, notwithstanding the potential costs, whilst a bridge would remove the risk at the crossing, it is not reasonably practicable to construct a footbridge.

#### *Miniature Stop Lights (MSLs)*

57. MSLs could be provided at the crossing at a cost in the region of £170,000 (NRA 2018) (although evidence from Mr Greenwood is that such a system would cost £250,000). However, such systems only mitigate a proportion of risk. The ALCRM rating being reduced from C6 to D6 with a reduction in the FWI from 4.83334E-04 to 1.85801E-04. Such a system still relies on pedestrians observing lights and signage. NR advise that there is still a high rate of fatalities occurring at crossings with MSLs. In terms of the cost benefit analysis carried out by NR, taking into account the costs (£170,000) and the fact that MSLs do not fully control the risk, this option has been rejected.
58. It is noted that MSLs have been installed at Bailey's Drove and a number of individuals suggested that such a system should be installed at Darkies. However, in respect of Bailey's Drove MSLs have been installed on the basis that the cost of a footbridge could not be justified and that there was insufficient land for its construction. Additionally after public consultation NR concluded that closure of the crossing could not be achieved due to the absence of a suitable alternative route. I also note that the Bailey's Drove crossing is comparatively well used when compared with Darkies. Furthermore, in respect of Darkies there are alternative routes which could be used.
59. Whilst MSLs at the crossing are possible, given the cost of their implementation and the level of risk reduction, I do not consider their provision to be reasonably practicable.

#### *Whistle Boards*

60. As noted above, whistle boards are in situ and provide some mitigation in respect of using the crossing from B to C. However, in respect of vulnerable

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<sup>8</sup> Section 106 of the Town and Country Planning Act 1990

users the positioning of a whistle board at 484 metres would be outside the guideline limits for effectiveness and therefore would not provide adequate mitigation.

#### *Tunnel*

61. NR advise that it would not be possible to construct a pedestrian tunnel under the railway line due to the need to construct ramps down to a lower level. There is also insufficient land within the operational railway to construct an underpass. The area surrounding the crossing is on a flood plain and is not ideal for building on. Any tunnel is likely to be subject to flooding. The estimated cost is between £4M and £6M. Given the practical difficulties and the estimated costs it is not reasonably practicable to make the crossing safe through the provision of a tunnel.

#### *Supplementary Audible Warning Devices (SAWD)*

62. SAWD is a radar based solution which detects an approaching train and then activates an audible warning system at the crossing. The system does not rely on integration with the existing signalling system. However, the system has limitations and the radar equipment is fallible. SAWD is only therefore approved as a secondary support to whistle boards and viewed as a temporary measure which is still under consideration and development. However, given that the whistle boards are non-compliant for vulnerable users and SAWD is a supplementary device this system is considered unfeasible.

#### *Physical improvements at the crossing*

63. The RA make the point that the stiles adjacent to the railway crossing are not compliant with the British Standard BS5709. Whilst this is likely to be the case the stile is said to be compliant with NR standards. Nevertheless the stiles are set back from the decision point and whilst some may find difficulty in using them they will not have any bearing on the crossing of the railway lines.
64. Reference is also made to a step onto the crossing which constitutes a trip hazard. Evidence of Mr Pead is that slips and trips are a recurrent theme reported as a cause of users being struck by trains. He acknowledged that the removal of the step would make a small change to the safety of the crossing. However, there is nothing before me to suggest that there would be any significant change to the crossing risk if the step were to be removed.

#### *Restrictions relating to dogs*

65. The RA, recognising that the Order route is used by dog walkers, suggest that an inexpensive measure to improve safety at the crossing would be to make an Order, either under section 27 of the Road Traffic Act 1988 or by way of a Public Space Protection Order under the Anti-social Behaviour, Crime and Policing Act 2014, requiring dogs to be kept on the lead. The OSS thought that a bylaw could be made to keep dogs on a lead and that this would enhance safety. However, walkers with dogs on leads will remain vulnerable users and the crossing is non-compliant for such users. Furthermore this will not remediate the vulnerability of other vulnerable users or indeed walkers. The crossing remains non-compliant.
66. It is noted that NR have erected notices at the crossing advising that dogs should be kept on leads. Whilst this may improve safety, noting that not all

users comply with signage, I revert to my previous comments which are equally applicable.

*Conclusions on making the crossing safe*

67. Bearing in mind the above I do not consider that any of the potential mitigation measures are reasonably practicable to make the crossing safe. I note the suggestion of Professor Divall that the ORR and NR expect new, and possibly lower cost, mitigations to be introduced in the near future. Mr Pead advised that whilst there are new technologies which are anticipated NR had considered all reasonable options currently available. In the absence of those new technologies and costs I am unable to give this suggestion any weight.

***Whether it is expedient to confirm the Order having regard to all the circumstances***

68. Before confirming the Order I must be satisfied that it is expedient to do so having regard to all the circumstances. Whilst the primary focus is the safety of the public it is clear that other factors can be taken into consideration. These other factors need to be put in the balance when considering whether it is expedient to confirm the Order.

*Safety of alternative routes*

69. Concerns are raised as to the safety of the East Burton Road and Burton Road which would need to be used as alternative routes in the event footpath 14 is closed. In respect of East Burton Road this has a 30 mph speed limit and is essentially a residential road although semi-rural in character. A narrow footway runs along the road for part of the length. The road appears to be lightly trafficked although the RA indicate that the road is used by motorists seeking to avoid waiting whilst the level crossing on the A352 at Wool is closed. Mr Hook also pointed out that with a shift change at the Police Headquarters at 7.00 in the mornings, access to the Technology Centre at 8.00 and the school run at the same time there was an increase in traffic in the area at these times.

70. Noting the above Mr Hajnus outlined that NR had had extensive consultations with the relevant highway authority, Dorset Council, who have raised no concerns as to the safety of East Burton Road. Neither has the Highway Authority seen it necessary to consider any additional safety measures on the road. It is accepted that Dorset Council now take a neutral stance in respect of the Order; that being due to a balance between the safety of the crossing and the safety of the alternative route which members felt difficult to determine. Nevertheless Dorset Council raise no concerns that use of the road by pedestrians is unsafe and they do not oppose confirmation of the Order. There is no evidence before me, even taking into consideration certain busy times and the use of the road when the crossing at Wool is closed, that East Burton Road is unsafe for pedestrians. Closure of the footpath will not result in any significant increase in pedestrian traffic and it should be noted that users of footpath 14 may well at present use part of East Burton Road as part of a circular walk.

71. The OSS provided information from 'Crashmap' which records 5 accidents on East Burton Road in a twenty year period, one of those being to the west of Burton Road. One incident involved a slight injury to a pedestrian who was in the carriageway but not crossing; this was at a location where there is a footway. In the absence of more details it is difficult to reach any conclusions

in respect of the incident. Nevertheless the 'Crashmap' figures do not suggest that East Burton Road is subject to a high level of incidents.

72. In respect of Burton Road, this has a 30 mph speed limit for much of its length with a short section at the southern end being 60 mph. There are very short sections of footway and the road is similar in character to East Burton Road although sections are too narrow to enable two vehicles to pass. Census data for the Burton Road level crossing indicates that the road is used by some 675 vehicles, 54 pedestrians and 54 cyclists in a 24 hour period. However, this is an extrapolated figure using a standard multiplier of 27 based on a 30 minute count. Nevertheless the count does not suggest that the road is heavily used by vehicles and no evidence has been put before me of any accidents taking place on this road. I revert to my comments at paragraph 70 which are equally relevant here. I note Mr Holmes and his wife found the road hazardous when the level crossing gates created a surge in traffic flow but there is no evidence that the road is unsafe for use by pedestrians.
73. The OSS referred to the Memorandum of Understanding<sup>9</sup> (MoU) and stated that in future a full road safety audit will usually be undertaken. The MoU states that where the public are displaced onto the local highway network then the alternative routes should be assessed by a full road safety audit. However, the MoU was not in place when the Order was made. In any event NR has undertaken consultation with the highway authority and there is nothing to indicate that the alternative routes are unsafe such that it is not expedient for the Order to be confirmed.

*Effect on the rights of way network*

74. Although it is contended that some members of the public use footpath 14 to gain access to the facilities in Wool neither the OSS or the RA suggest that any facilities or destination point would require walking a greater distance. Mr Hajnus provided a comprehensive assessment of the accessibility of amenities and facilities in Wool. The closure of footpath 14 would not result in any additional inconvenience in accessing amenities and facilities. It is accepted that there might be some amenity value in being able to use footpath 14 to gain access to Wool but this must be seen in the context that the footpath is unsurfaced and prone to becoming wet and muddy. In contrast the alternative routes are surfaced.
75. In terms of other amenity attractions in the area, and in particular those to the north of East Burton Road, I acknowledge that footpath 14 could be used to access these attractions. However, the closure of footpath 14 will not increase the walking distance to these attractions, albeit other routes will have to be used. There is nothing to indicate that there will be any significant loss of convenience when accessing these attractions.
76. The OSS contend that most of the users of footpath 14 are local, or very local leisure walkers, usually with dogs. The evidence from the crossing census suggests that 54% of users are dog walkers. The OSS assert that footpath 14 forms an essential part of the rights of way network and the closure will seriously inconvenience such users.

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<sup>9</sup> Public Rights of Way, Level Crossings on the Rail Network, Memorandum of Understanding between Network Rail, ADEPT, LGA & IPROW

77. I would accept that footpath 14 forms a short circular walk although in the context of such a walk it will be necessary to use East Burton Road and possibly Burton Road. A number of individuals gave evidence to the inquiry to this effect. It is also noted that the footpath forms part of a through route to the north along an unclassified road (D53110).
78. NR contended that the comparative amenity value/enjoyment of the circular walk was doubtful and must be viewed in the context of the existence of other nearby circular walks, the existence of other pleasant walking routes and the existence of large open spaces accessible on foot or by a short car journey.
79. I acknowledge that there are other potential circular walks in walking distance of footpath 14, some of these, for example the permissive path across The Moors, are already well used which suggests that they are suitable for leisure walking with or without dogs. However, the use of these routes will mean that any replacement circular walk is likely to be longer. It is accepted that use of these routes are for leisure including dog walking and that in many cases the additional distance will not amount to any inconvenience. However, there is some merit in footpath 14 providing a short circular walk for some path users.
80. It is also acknowledged that there are areas of open space which are accessible by a short car journey. However, access to these areas relies on the availability of suitable vehicular transport and these areas are not immediately accessible to those who use footpath 14 for leisure walks. As such this amounts to some inconvenience.
81. Footpath 14 also links directly with the D53110 which can be used to access the permissive path to Wool Bridge, Water Meadow Lane and Footpath 17. If the Order were to be confirmed then direct access over East Burton Road to the D53110 would not be possible. Nevertheless access would still be possible from East Burton Road and access to the permissive path, Water Meadow Lane and footpath 17 will not be prevented.
82. I note concerns of the OSS that the permissive path could be withdrawn at any moment. Whilst this might be the case there is no indication that such permission will be withdrawn. It is therefore appropriate to consider the permissive route in relation to alternative routes. It may also be the case that the permissive footpath becomes impassable due to flooding; Mr Hook said that the path was often flooded in winter. However, whilst at times the path may become inaccessible, there is nothing to suggest that other routes are not available or that the permissive path is inaccessible outside the winter months. It is noted that footpath 14 is also prone to flooding particularly towards the railway line at point C.
83. In relation to the amenity value of the path, whilst at present the section of footpath 14 C to D passes through an open field the adjoining land is essentially a built environment. Although there is some amenity value to the path any loss should be seen in this context. Additionally the land is identified in the Local Plan for development albeit partly as recreational space. Consequently the amenity of the area will be changed considerably when the land is developed.
84. The OSS states that dog walkers will be further inconvenienced as, along the alternative roads, walkers will not be able to let their dogs off the leads. Others mentioned the fact that their dogs were able to be let off the lead when

using footpath 14 and one individual mentioned using the land over which the footpath passes for dog training. However, whilst dogs are a usual accompaniment on a public right of way, this does not mean that dogs are free to roam over the land; use is effectively confined to the right of way<sup>10</sup>. Additionally when livestock are present it is an offence to allow dogs to be at large which is defined as not on a lead or under close control; it is known that livestock is on occasions kept in the field crossed by footpath 14 C to D. Whilst dogs may need to be kept on a lead when using the vehicular highway as part of any alternative route any loss of convenience for dog walkers should be seen in the above context. I do not consider any loss to be significant.

85. In respect of tourism and access to the coast, footpath 14 is at a significant distance from the coast and there is no evidence that the footpath provides a coastal link. I would acknowledge that it is possible to use footpath 14 as part of a route to the coast but its closure would not prevent such access. There is also no evidence that footpath 14 is promoted as a link to the coast, that with expanding tourism the route will be promoted as such or that closure of the footpath will have an adverse effect on promoting tourism.

*Operational efficiency/Statutory duties*

86. NR is a regulated statutory undertaker bound by a statutory framework including the Railways Act 1993 (as amended)(the 1993 Act). The 1993 Act established the Rail Regulator under the Strategic Rail Authority (now the ORR). NR has a legally prescribed duty and responsibility to promote safety, improve railway efficiency and to enhance and improve the network in operational terms. NR is required to comply with the licence issued under Section 8 of the 1993 Act which is enforceable by the ORR by way of enforcement orders.
87. NR also have legal duties and responsibilities in terms of public safety and level crossings (section 117 of the 1993 Act) and the Health and Safety at Work Act 1974 (the 1974 Act). Under the 1974 Act NR is responsible for the health and safety and welfare of persons from risks to health and safety in connection with its undertaking. This responsibility extends to those using level crossings in addition to those who may misuse those crossings or trespass onto the line. Section 55 of the British Transport Commission Act 1949 provides for prosecutions in respect of trespass on the line.
88. I was referred to the case of *The Ramblers Association v Secretary of State for Environment Food and Rural Affairs [2017] EWHC 716 (Admin)* where Dove J found a clear public interest in excluding trespassers from the railway line who may not only come to harm themselves but also give rise to health and safety risks to those working on the railway. Bearing this in mind the requirement, under the terms of a licence, to provide for public safety is also in the interest of the public.
89. It is acknowledged that there have been no known fatalities at the crossing and the NRA 2018 records that no safety events had been known to occur in the previous 12 months. However, the crossing is non-compliant in respect of SLB for both non-vulnerable and vulnerable users and is ranked as high to medium risk. Ongoing use of the crossing, the potential for a change in the user profile from adjacent residential development, the increased scope for misuse,

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<sup>10</sup> Although footpath 14 has no defined width it is likely that rights extend beyond the worn surface of the path

trespass and accidental human error raises the possibility that continued use of the crossing will fail to promote operational efficiency and safety. Should an incident occur at the crossing then any temporary speed restrictions or line closure would result in delays to train services and the potential for timetable disruption. Mr Greenwood explained that where a train runs late due to incident or temporary speed restriction it can cause a knock-on effect across the network. Each delayed train can further compound the situation causing delays across the network. The closure of the crossing would reduce the risk of any incident or need for a temporary speed restriction thereby reducing any potential impacts on the rail network and any compensation to the train operating companies.

90. Mr Greenwood said that any compensation (Schedule 8 payments) needs to be paid out of the 5 year allocation meaning there will be less money for other schemes including mitigation. I note the observations of Professor Divall in respect of Schedule 8 payments and it may be the case that the recipient of the payment might spend the money on other safety related improvements. However, Mr Greenwood was clear that in respect of Schedule 8 payments there was a net loss to NR which detracted from other schemes and meant that there was less money for mitigation.
91. In addition to compensation to train operating companies any unnecessary disruption to train services could amount to a breach of the operating licence with the potential for enforcement orders from the ORR. This again would have adverse impacts on NR. In the event of an accident at the crossing there would also be the potential for prosecutions/penalties under the 1974 Act.
92. Bearing in mind the above, whilst the crossing remains open there is the potential that an incident might occur which impacts on the operational efficiency of the line and result in additional costs for NR. NR also may be subject to enforcement action from the ORR. The closure of the crossing will reduce the potential for such impacts and therefore is a factor which needs to be put into the balance of expediency.
93. NR make the point that level crossings are a long term restriction to promote the effective and efficient use and development of train capacity on the network by restricting line speed enhancements and the number of trains which can run. This, it is stated, is contrary to NRs objectives under its operating licence and restricts wider government policy to improve the rail network.
94. In terms of proposed enhancement of the network Mr Pead explained that there was currently a bid to increase the number of services on Sundays with an aspiration to increase services on a Saturday as well; there was also a possibility of additional freight trains. Professor Divall contended that NRs strategic plan showed no improvements in services are likely before 2043.
95. Whilst level crossings have the potential to inhibit improvements to services it seems unlikely that any proposed increase in services will be hampered to any significant level by the existence of the crossing. As Mr Pead pointed out, whilst in some instances requests to increase services cannot be accommodated, in respect of the increased services on the Wessex line these could be slotted into the timetable. Further, whilst I note NRs objectives and wider government policy I have no evidence to indicate any future proposals which might be hindered by the crossing. Nevertheless the crossing will have

the potential to inhibit improvements and although I give this element very little weight in terms of the expediency test it is a matter which should be put in the overall balance.

#### *Noise Amenity*

96. NR contend that the whistle board sounding is an arguable harm caused to the residential amenity of many. Mr Greenwood stated that the noise generated when horns are sounded had lifestyle and health implications for residents in the proximity of whistle boards and this had been identified in reports by the RSSB. It was the source of numerous complaints.
97. Mr Payne supported the closure of the crossing as this would remove the need for horns to be sounded by passing trains. In his view the horns regularly disturbed East Burton residents early morning and late at night; he was certainly disturbed by the noise. Mrs Thorpe said that the sounding of horns was intrusive and had become the source of broken sleep since the shortening of the NTQP. Inquiry document 4, correspondence from a local resident, also refers to the noise pollution generated by the blowing of horns and that their children had been woken by some of the louder horns. Another local resident, Mr Munro, also expressed concerns as to the impact of the horns on his enjoyment of his property.
98. Although few residents gave evidence to the inquiry as to the disruption caused by the sounding of horns in response to the whistle boards it is clear that residents suffer a degree of disturbance which has an adverse effect on the amenity of their property and lifestyle. The closure of the crossing will remove the need to sound horns and will therefore be of benefit to residents living in East Burton.

#### *Retention of crossing*

99. Professor Divall suggested that the annual costs of maintaining the crossing as is might be a reasonable sum to pay to retain the crossing. I note Professor Divall's submissions on the annual costs and Mr Greenwood acknowledged that costs in the region of £2000 were not high. However, to leave the crossing open would not mitigate against the risk of using the crossing. The closure of the crossing is not without cost but removes the risk to the public altogether.

#### *Alternative proposals*

100. NR have considered four options for a new path from the crossing to Bailey's Drove level crossing. However, NR have been unable to secure agreement with the affected landowners and there is insufficient land within the operational corridor to accommodate a link between the crossing and Bailey's Drove. In the circumstances such a diversion is not a viable option.
101. The OSS, whilst totally opposed to any extinguishment, asked that if it is considered that the level crossing should be closed then the section C to D should be retained. Whilst it is open to me to modify the Order accordingly the Circular cautions against the creation of a cul-de-sac. A cul-de-sac may well encourage trespass onto the closed crossing, and other land, and there is no place of popular resort in this instance that the public might wish to visit. Although the retention of the footpath will allow continued enjoyment of the footpath C to D and the surrounding land I do not think that the advantages outweigh the disadvantages.

102. It was also suggested by the OSS that if the crossing is closed then a diversion of the path from point C to Giddy Green Lane would be valuable in avoiding this section becoming a cul-de-sac. However, there is nothing before me to indicate that such a proposal could be taken forward and is therefore not a matter which I can take into consideration.
103. The RA contend that the footpath could be retained and taken into account when the land over which the footpath passes is developed. There is no certainty as to whether any developer would be prepared to make provision for the existing route, or any alternative route, in any development. As such I do not consider this to be a viable option. In any event, as accepted by the RA, this course of action is unsatisfactory as any safety risk would remain.

#### *Health benefits/alternative transport*

104. The RA, and others, argue that there is a need for a path network which encourages walking and connects communities. It is also suggested that walking should be encouraged so as to promote sustainable transport and reduce carbon emissions. I would acknowledge that there are health benefits in walking and that the Government is encouraging more sustainable forms of transport which will include walking. Whilst there will be a net loss to the network if the Order is confirmed there will remain opportunities to walk and the extinguishment of footpath 14 will not prevent access to local amenities on foot or render such access less convenient.

#### *Heritage value*

105. It is stated that public rights of way are part of our heritage and many are centuries old, the crossing has a history which deserves to be acknowledged. Whilst I note the observation there is nothing before me to indicate that the footpath is of historic origins such that this should add weight against confirmation of the Order. The crossing was established, in consequence of the construction of the railway line, as an occupation road. I do however note the name 'Darkies' Crossing/Lane/Corner refers to the name of a dray horse which hauled ale to the Seven Stars public house.

#### *Future development of Wool*

106. It is the secondary case of NR that if it is considered that the expediency test in respect of public safety terms is not made out then the overall case for expediency is well demonstrated when taking into account the increased public safety risk from the increased use of the crossing in consequence of a large housing development adjacent to the crossing.
107. The Purbeck Local Plan is currently under review and requires formal adoption; formal adoption is not expected before early 2020. However, there are no proposed modifications to policy H5 which provides for an allocation of up to 470 houses and a 65 bed care home in the vicinity of the crossing. The areas immediately adjacent to the railway line have been identified for housing and public open space. No planning applications have yet been submitted in respect of the land parcels making up the Wool H5 housing allocation although an EIA<sup>11</sup> Screening Option Request has been submitted to Dorset Council.

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<sup>11</sup> Environmental Impact Assessment

108. Whilst I note the observations that development is unlikely for many years, given the inclusion in the Local Plan as an area for development it is more likely than not that development will take place in the near future. Such development may not be imminent but it is appropriate to consider the future development of the area in terms of expediency.
109. In the event of development taking place there is likely to be a marked increase in the use of the crossing. It is also likely that the user profile will change, particularly bearing in mind the potential increase in family homes in the area. There will be a consequential increase in the potential for use by vulnerable users, particularly children and younger users and a likely increase in use by dog walkers. Although I recognise that NR have made assumptions as to the change of use the risk has been calculated by NR as increasing from the current risk level of C6 (4.83E-04) (C5 (5.25E-04) (based on the census data of July 2019) to C4 (0.00297) which equates to a five fold increase on the original risk. Professor Divall acknowledged that in the event of the area being developed mitigation would be required as the crossing would be unsafe and the ALCRM score would increase.
110. I recognise that with development of the area footpath 14 could play a more important part in the rights of way network but, noting my comments in respect of the provision of a bridge, it cannot be assumed that external resources will be made available to upgrade or replace the crossing. It may also be the case that any development may increase traffic along East Burton Road and Burton Road. However, if any safety implications arise from any proposed development then measures will need to be taken to remedy the situation. I note the observation that the closure of the crossing will facilitate the development but given the Local Plan it is likely that development will take place regardless of whether or not the crossing is closed. Nevertheless as noted above any development is likely to increase the risk at the crossing.

***Arrangements for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained***

111. Should the Order be confirmed NR will extend the existing boundary to fully close out the crossing with palisade fencing at point B with the existing post and wire fence at point C being extended. A 'No Trespass' sign will be erected at point B and all existing signage will be removed. Upon carrying out the above works NR will remove all crossing furniture, including decking and anti-trespass boards. NR will also, subject to any direction from Dorset Council, display all appropriate signs. Accordingly the necessary arrangements have been made.

***Conclusions on main issues***

112. The crossing has been assessed as being high to medium risk and some considerable weight should be given to the safety of those who use or are likely to use the crossing. NR clearly has an obligation towards the safety of the public and those who work on the railway. NR have considered a number of options to make the crossing safe but none of these are reasonably practicable. Other options have been put before me but none of these will make the crossing safe or are reasonably practicable. If the Order is confirmed NR will maintain and erect suitable barriers and signs.

113. I recognise that the closure of the crossing will have an adverse effect on the rights of way network. However, the closure of the crossing will not prevent anyone from accessing the wider rights of way network or any local facilities or amenities in the area. The closure of the crossing will mean the removal of the need for trains to sound their horns when approaching the crossing. This will be of benefit to local residents who are disturbed by the noise of the horns. There will be some benefits in respect of operational efficiency.

114. Whilst other factors, as considered above, can be taken into account in determining the Order the primary considerations are those specified in section 118A of the 1980 Act set out above at paragraph 8 above. Taking all matters into consideration, although very finely balanced, I conclude that it is expedient to confirm the Order. In reaching this decision I have not had regard to the implications arising from the development of land in the vicinity of the crossing (NRs secondary case). If I were to have regard to these element then this would add further weight to the confirmation of the Order.

### **Other Matters**

115. Concerns were raised in respect of the maintenance of ditches alongside the section of Footpath 14 A to B and the registration of the land. Representations were made in relation to the design and visual issues in respect of the footbridge near to the Ship Inn and the design of the Bailey's Drove crossing. Opposition was also raised to the development of the land over which footpath 14 passes. Whilst I note these concerns they are not matters for my consideration. The relevant issues are set out at paragraph 8 above.

116. The RA questioned why, if the crossing was deemed to be unsafe, had there not been a temporary traffic regulation order imposed on the crossing. This would appear to have been an option. However, NR explained that the temporary closure of the crossing would have hindered consultation with the local community and NR noted that there was some discernible local sentiment against closure.

117. Representations have been made in respect of comments made by the Council relating to improvements in accessibility. Whilst I note these concerns they do not have any bearing on my decision.

### **Conclusions**

118. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modifications.

### **Formal Decision**

119. I confirm the Order subject to the following modifications.

- At paragraph 7 of the Order after the words '**THIS ORDER EXTINGUISHES**' insert the words '*the full width of*'.
- At Part 1 of the Schedule to the Order at line 1 delete '*From*' and insert '*The full width of the footpath from*'.

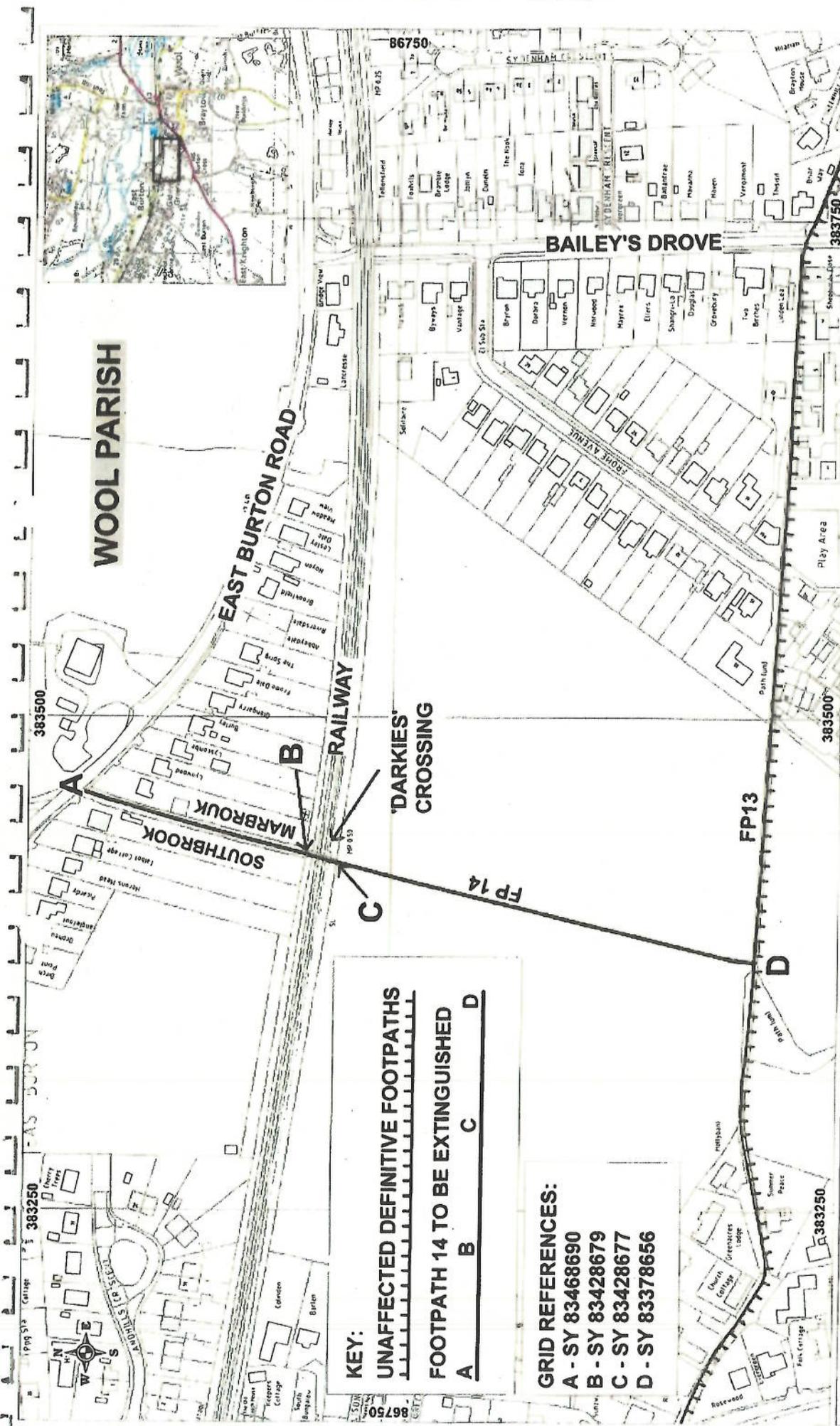
*Martin Elliott*

Inspector



- Council 2018 (redacted) (28 November 2018) (NR6)
- 11 Rail Accident Report – Fatal accident at Tibberton No. 8 footpath crossing 6 February 2019, Report 13/2019, October 2019
- 12 Email correspondence between Savills and Dorset Council regarding Purbeck Local Plan (15 October 2019) (NR7)
- 13 Statement of Mr A Wickett (16 October 2019)
- 14 Correspondence from Ms S Thorpe to Dorset County Council (1 December 2018)
- 15 Statement of Mr D Blackmore
- 16 Correspondence from Prof. Divall to Planning Inspectorate (3 October 2019)
- 17 Statement of Mr P Payne
- 18 Statement of Mr B Shepard
- 19 Statement of Mr R Caudell
- 20 Statement of Mrs D Parry
- 21 Statement of Ms S Thorpe
- 22 Extract of RSSB T984, Factors associated with crossing users (NR9)
- 23 Note of Network Rail on census dates (NR10)
- 24 Note of Network Rail on S118A(4)(b) 'Arrangements' (NR11)
- 25 Summary of Consultation Responses
- 26 Extract of RSSB T984 table of critical errors/violations and influencing factors against user type (NR12)
- 27 Correspondence of Dr R S Farr to Planning Inspectorate (9 October 2019)
- 28 Extracts from Crashmap (traffic accidents along East Burton Road)
- 29 Note of Network Rail on distances to local dog walking/recreation areas (NR13)
- 30 Plan of local dog walking/recreation area (NR14)
- 31 Note of Network Rail on train speeds approaching Darkies crossing on the down line (NR15)
- 31 Note of Network Rail on whistle boards at Darkies crossing on the down line (NR16)
- 32 Purbeck Local Plan Review, extract from Dorset Council website (NR17)
- 33 Schedule of main modifications to Purbeck Local Plan 2 August 2019 (NR18)
- 34 Dorset Council Response to: Actions arising August 2019 hearings held as part of the Examination of the Purbeck Local Plan (2 October 2019) (NR19)
- 35 Note of Network Rail on census results at East Burton Level Crossing (NR20)
- 36 RSSB Operations and Management Research into the causes of pedestrian accidents at level crossings and potential solutions Appendices – Revision 1 (CD1)
- 37 Note by Prof. Divall on timetabled passing trains (CD2)
- 38 Correspondence from Open Spaces Society to Dorset Highways (April 27 2018)
- 39 ORR's Annual Health and Safety Report of Performance on Britain's Railways: 2015-16, July 2016 (CD3)
- 40 Plan of permissive path towards Police HQ at Winfrith (Ramblers 1)
- 41 Additional Statement of Mr R Caudell

- 42 Statement of Mr V Osmond
- 43 Closing Statement of Prof. Divall
- 44 Closing Statement of the Ramblers
- 45 Closing Statement of the Open Spaces Society
- 46 Closing Submissions on behalf of Network Rail including *The Ramblers Association v Secretary of State for Environment Food and Rural Affairs [2017] EWHC 716 (Admin)*



**WOOL PARISH**

**BAILEY'S DROVE**

**'DARKIES'  
CROSSING**

**KEY:**  
 UNAFFECTED DEFINITIVE FOOTPATHS  
 FOOTPATH 14 TO BE EXTINGUISHED  
 A    B    C    D

**GRID REFERENCES:**  
 A - SY 83468690  
 B - SY 83428679  
 C - SY 83428677  
 D - SY 83378656

**GEOGRAPHICAL INFORMATION SYSTEMS**  
  
**Dorset County Council**  
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**Date: 13/07/2016**  
**Scale 1:2500**  
**Drawn By: CAM**  
**Cent X: 383494**  
**Cent Y: 86728**

**DORSET COUNTY COUNCIL (FOOTPATH 14, WOOL AT EAST BURTON) RAIL CROSSING EXTINGUISHMENT ORDER 2018**

*Caroline F. Lewis*

**MAP NOT TO ORIGINAL SCALE**