
Order Decisions

Site visit made on 13 April 2016

by Alan Beckett BA MSc MIPROW

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

Decision date: 5 May 2016

Order Ref: FPS/T1600/4/52 ('Order A')

- This Order is made under Section 119A of the Highways Act 1980 ('the 1980 Act') and is known as the Gloucestershire County Council (Unnumbered Public Footpath) Town of Stroud) Diversion Order 2013.
- The Order is dated 26 February 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections and 1 representation outstanding when Gloucestershire County Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T1600/3/15 ('Order B')

- This Order is made under Section 118A of the 1980 Act and is known as the Gloucestershire County Council (Unnumbered Public Footpath) (Town of Stroud) Extinguishment Order 2013.
- The Order is dated 26 February 2013 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections and 1 representation outstanding when the Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I carried out an accompanied site visit on Wednesday 13 April 2016 when I was joined by Miss Harris of the Council, by Miss Scogings and Mr Gratland of Network Rail, and by Mrs Roberts who had made representations against the Orders.
 2. The entirety of Beards Lane (including the railway crossing) and Downfield Road to the north and south of the railway are recorded in the Council's list of streets maintained at public expense. Although the crossings at Beard's Lane and Downfield Road are not recorded in the Council's definitive map and statement of public rights of way, the Council considers that the documentary evidence it has consulted demonstrates, on a balance of probabilities that public pedestrian rights subsist over the crossings. Network Rail does not dispute this conclusion and acknowledges that in 1954 the British Transport Commission accepted that the public had acquired pedestrian rights over the crossings through unhindered long use.
-

3. In consequence of the crossings not being recorded in the definitive map and statement, the paths are described in the Orders as being 'unnumbered'. In the circumstances I concur with the parties that the provisions of section 119A and 118A are applicable to these level crossings.
4. The crossings at Beards Lane and Downfield Road are currently closed to pedestrian traffic as a result of a Temporary Traffic Regulation Order ('TTRO') made by the Council on the grounds that the crossings pose a danger to the public. The TTRO will remain in effect until my decision as to whether to confirm, or otherwise, these Orders. The infrastructure associated with the crossings has been removed and Network Rail has secured the entrances to the crossings with metal palisade fencing.

The Main Issues

5. If I am to confirm the Orders, I must be satisfied that they meet the tests set by the Act, namely whether it is expedient to confirm the Orders having regard to all the circumstances and, in particular: -
 - 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 Orders are confirmed, any appropriate barriers and signs are erected and maintained.
6. In this case, the specific matters I need to consider are:
 - a. the safety of the current pedestrian crossings for the public;
 - b. the safety of the alternative routes for pedestrians by comparison;
 - c. the convenience of the alternative routes for pedestrians by comparison;
 - d. whether any improvements to the pedestrian crossings, so as to make them significantly safer, are reasonably practicable; and
 - e. whether, if the Orders are confirmed, adequate arrangements have been made to secure the redundant crossings.

Reasons

Background

7. In March 2011 the Government committed to fund certain enhancements of the railway between Swindon and Standish Junction to permit the operation of 4 trains per hour in each direction and to provide a suitable diversionary route for trains running between London Paddington and South Wales which would be affected by the Great Western Electrification Project ('GWEP'). The GWEP will involve frequent closures of the current principal Swindon – Bristol – Severn Tunnel route until 2019. The improvement works between Swindon and Standish Junction will also increase the carrying capacity of the route through Stroud as part of the GWEP.
8. The commitment to upgrade the Swindon – Standish Junction line and the projected increase in the number of trains using the line from 1 per hour each way to 4 per hour each way caused Network Rail to review its assessment of the risk posed by the crossings to pedestrians and to rail passengers and crew. The maximum permissible line speed on both up (eastbound) and down

(westbound) lines is 90mph (144Kmh); the crossings serve as a link between residential streets and form part of the route to school for some of the children who attend the three secondary schools close to the railway. Arising from this review, Network Rail considered that the crossings should be closed with an alternative means of crossing the railway being provided.

9. Order A proposes the diversion of the level crossing to run on a new line over the footbridge which Network Rail has constructed. The footbridge has been constructed with future electrification of the line in mind and has sufficient clearance between the deck and track bed to allow for the necessary infrastructure associated with the electrification of the line to be installed without requiring the bridge to be raised or the track to be lowered. Furthermore, the bridge has been constructed with both steps and a 1:15 ramp on either side of the railway to accommodate as wide a group of users as possible.

Whether the current pedestrian railway crossings are safe

10. Any crossing of a railway line by pedestrians, where there is no physical separation from approaching trains, carries a significant element of risk. Furthermore, not only do pedestrians possess different degrees of mobility but variations in weather will create differences in visibility and conditions underfoot. It is difficult therefore to determine with any degree of precision whether a crossing is 'safe' or 'unsafe'; the issue is whether the crossings currently carry an acceptable level of risk and, if they do not, whether it is reasonably practicable to take steps to reduce that risk to a level that is acceptable.
11. The estimated time taken to cross the running rails (the crossing time) is calculated as the time required to cross between 'decision points'. Decision points are found on either side of the line and are defined in the relevant guidance¹ as '*a point at which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made*'. The decision points are taken to be the point at which notices bearing the legend '*Stop Look Listen Beware of Trains*' are situated.
12. The critical figure in relation to the crossing time is the warning time. The warning time is calculated by reference to 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). Visual warning times are calculated using the maximum permitted line speed.
13. The Council and Network rail submit that due to the curvature of the railway at both Beards Lane and Downfield Road the maximum sighting distance available to a pedestrian considering whether to cross the railway only extends to 200 metres. For a train travelling at the maximum permissible line speed of 90 mph (144Kmh) the visual warning time is 4.97 seconds whilst a pedestrian would require 7.57 seconds to pass between decision points. These figures have not been challenged and although I did not have the opportunity to verify them for myself, I have no reason to doubt them having seen express trains pass along the line during my time at the site.

¹ Office of Rail regulation Railway Safety Publication No. 7 'Level Crossings: a guide for Managers, Designers and Operators' (2011).

14. In recognition that the visual warning time was insufficient to allow pedestrians to cross in safety, Network Rail had undertaken a number of measures to mitigate the perceived risk. Enhanced signage had been erected at the trackside and an audible warning system had been installed which initially gave around 40 seconds advance warning of the approach of a train. I understand that this warning time was extended if the train was to stop at Stroud which led to some users becoming impatient and crossing whilst the alarm was still sounding. One drawback with this system was that it did not have an Another Train Coming (ATC) setting; if another train was approaching the signal did not change tone. The absence of the ATC setting is considered to be another element in the level of risk the public are exposed to at the crossings; those pedestrians who attempt to cross the line having seen a train pass may be unaware of the approach of the second train.
15. Incorporating a large number of factors, Network Rail uses an All Level Crossing Risk Model (ALCRM) to assess the relative risk to both the public and to rail passengers and crew in relation to all types of level crossings. The ALCRM system assesses individual risk (that is, the risk to members of the public using the crossing) and collective risk (the risk to passengers, train crew and users of the crossing). Individual risk is identified by letter where A is the highest and M the lowest. Collective risk is identified by number where 1 is the highest risk and 13 the lowest.
16. As part of the ALCRM model, the probability of a regular user of a crossing being killed or seriously injured is also calculated; this is known as the Fatalities Weighted Index ('FWI').
17. A survey of use of the crossing was conducted by Network Rail between 06:00 and 24:00 over the 9 days between 8 October 2011 and 16 October 2011. During that period 1438 journeys over the Beards Lane crossing were made by adults and 1256 journeys were made by children; at Downfield Road 1372 journeys were made by adults and 2422 journeys were made by children. A total of 310 trains ran over the crossing during that period.
18. Based on these figures, the ALCRM assessed the crossing at Beards Lane as being C2 with an FWI probability of a fatality once every 73 years. To set this assessment in context, Network Rail submits that the crossing at Beards Lane ranks as the seventh riskiest crossing out of the 368 pedestrian crossings on the western network. Furthermore, whilst increasing the number of trains per hour to 4 has no effect upon the ALCRM score of C2, the FWI probability rises to one fatality every 68 years.
19. For Downfield Road, the ALCRM model assessed the crossing as C2 with an FWI probability of a fatality once every 37 years; increasing the frequency of trains to the projected level had no effect upon the ALCRM score of C2 but the FWI probability was increased to 1 in every 34 years. The Downfield Road crossing ranks as the second riskiest crossing on the western network. Network Rail submits that the average FWI probability for the western route's 368 level crossings is 1 in every 1100 years.
20. Although there are a number of factors which influence the level of risk present at these two crossings, a highly significant factor is the extent of use by children of secondary school age revealed by the survey conducted by Network Rail in 2011. I have made reference to the results of that survey in paragraph 17 above. Immediately to the south of the railway are Stroud and Marling

Schools. To the north of Stratford Road is Archway School; the survey conducted by Network Rail demonstrates that many pupils used the crossings as part of their journey to and from these schools.

21. Use of the crossings would therefore be significantly greater at the ends of the school day than it would be at other times. Network Rail considers schoolchildren to be 'vulnerable' users of the crossings; they are more prone to risk-taking, have poorer judgement of the speed of approaching trains, are more prone to distraction by their peers when travelling in a group and are more likely to be wearing something which impedes the ability to see or hear approaching trains.
22. Although the ALCRM score would be unchanged by the projected increase in the number of trains running through the Stroud valley during the implementation of the GWEP, the increase in train numbers has a detrimental impact upon the FWI probability. Whilst the audible warning system mitigated the risk to crossing users when only one train per hour each way ran over the crossings, increasing the number of trains to four per hour is likely to increase the risk of two trains activating the audible warning at the same time. In the absence of an ATC setting, the increase in train frequency is likely to increase the risk to pedestrians.
23. I consider that the extensive use of the crossings by a vulnerable user group in combination with the projected increase in the number of trains which would pass over the crossings at the maximum permissible speed produces a higher level of risk to users of the crossings than should normally be acceptable.

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

24. The effect of Order A would be to re-align the Beards Lane crossing so that it runs over the footbridge constructed by Network Rail either by means of the steps or the 1:15 ramps provided. The steps and the ramp on the southern side of the railway also provide a direct link to the footway which links Beards Lane with Downfield Road.
25. As the diverted route would allow path users to negotiate the railway without bringing them into contact with it, the proposed alternative route does not pose a risk to pedestrian safety.
26. With regard to the extinguishment of the Downfield Road crossing, for those pedestrians approaching the railway from the south the proposed alternative route is along the footway which links Downfield Road to Beards Lane. Pedestrians have the option of walking the whole of the link footway to the steps at point B (on the plan attached to Order A) or access the ramp via the steps at point O or access the ramp at point H. Although the alternative route is more circuitous than the direct crossing of the railway on the level, the alternative route (whichever one is followed) allows users to negotiate the railway without bringing them into contact with it and is therefore safer than the current crossing.
27. Mrs Roberts considered that the alternative routes for pedestrians approaching the crossing from the north were dangerous; Stratford Road was heavily trafficked and vehicles were sometimes parked on the bends in the road between Downfield Road and Beards Lane. In Mrs Roberts' view, the alternative route along Central Road was not safe as there was no footway alongside the

western end of the road and only a footway on the southern side of the eastern end of the road.

28. I took the opportunity to view both Stratford Road and Central Road as part of my site visit. At the time of my visit there was a steady flow of traffic along Stratford Road which has a footway on both the north and the south sides. Despite regular traffic on the road, I did not consider myself to be at any greater risk on this section of road than would be the case on any other road with similar characteristics. Although Mrs Roberts alluded to a number of traffic accidents on this section of road no statistical evidence has been produced from which it could be reasonably concluded that pedestrians would be subject to significant risk or injury or death when travelling on the Stratford Road footway between Downfield Road and Beards Lane. I consider that although there will be some risk involved in walking on the footway at the side of an A road, the risk of injury is much smaller than that which is present at the Downfield Road crossing.
29. Although there was some traffic movement along Central Road at the time of my site visit, it was not particularly busy (certainly not in comparison with Stratford Road) and despite there being no footway on one section of the road, the site visit party was able to make its way along it without incident. I am of the view that whilst walking along Central Road is not without risk for the reasons identified by Mrs Roberts, the risk of injury is less than that present at the Downfield Road crossing.
30. As the alternative routes would allow path users to negotiate the railway without bringing them into contact with it, the proposed alternative routes do not pose a risk to pedestrian safety. I consider that the alternative routes are safer in comparison to the existing routes, and this finding sits in the balance against the retention of the current crossings.

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

31. For anyone wishing to cross the railway at Beards Lane, the stepped and ramped bridge provides a reasonably convenient alternative, albeit that there would be an increase in the both journey time and distance as a result of negotiating the bridge. I note that the proposed diversion is supported by the three secondary schools whose pupils use the crossing to travel to and from school.
32. The crossing is used primarily for utilitarian purposes of travel to school or between the residential areas which lie to the north and south of the railway. Whilst journey times and distances will be increased as a result of the diversion, I consider that the proposed diversion has the benefit of retaining a through route along Beards Lane. The bridge constructed by Network Rail seeks to accommodate access not only for pedestrians but those using push chairs, mobility aids or pedal cycles. Although increased journey times and distances may be an inconvenience to some users, I do not consider these to be of such significance to warrant the retention of the existing crossing.
33. Mrs Roberts considered that the proposed alternative route via Central Road and the bridge would be very inconvenient for any pedestrian wishing to travel between the two parts of Downfield Road; Mrs Roberts estimated that the alternative would add between a half and one mile to the journey and

suggested that a footpath could have been created within railway land on the north side of the railway between Downfield Road and the western end of the new bridge.

34. Despite the circuitous nature of the alternative route for those wishing to make their way between the two parts of Downfield Road, the proposed closure is supported by the three schools served by the crossing. I consider that the schools represent the views of a significant number of those who regularly use the crossing and who support its closure irrespective of how inconvenient the alternative route may be. Although Mrs Roberts considers that the confirmation of the extinguishment order should be conditional upon the creation of a footway linking Downfield Road and the new footbridge on the north side of the railway, the Order before me is an extinguishment order; as such the creation of a new footpath is beyond the scope of the Order or the powers available to me to modify it.
35. For some people who wish to travel from A to B (on the plan attached to Order B) or to travel to Marling or Stroud School or to destinations along Cainscross Road, the alternative route via Central Road, the new bridge and the footway to the south of the railway is likely to be less convenient than using the crossing due to the increase in journey time and distance. However, given that the proposed closure is supported by all the local schools whose pupils make up the majority of users, I do not consider the inconvenience to be of such magnitude to require the retention of the crossing.

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

36. Network Rail's view is that risk can be best mitigated if it is removed altogether and the closure of both crossings would eliminate any risk posed to pedestrians. As part of its submissions, Network Rail gave details of the range of options which it had considered to mitigate the risk which users were exposed to. Improving sighting distances and thereby increasing the sighting time was not possible as it was track curvature and not vegetation growth which restricted visibility at both crossings. Reducing train speeds to increase the sighting time was not an option as the expectation of Government was that line speeds would remain the same or increase.
37. The audible warning system had been installed to mitigate the risk caused by insufficient sighting time but its effectiveness would be reduced as train numbers increase. The installation of Miniature Stop Lights (MSL) had been considered as a replacement for the audible warning system; however, the provision of MSLs at both crossings would cost in the region of £1.8 million; Network Rail considered that eliminating the increased risk by constructing a footbridge to serve both crossings was a better use of public funds than trying to further mitigate but not eliminate the risk. Consideration had also been given to the provision of an underpass to replace the crossings but was not pursued on engineering, land use and cost grounds.
38. Whereas the installation of MSLs may have provided further mitigation for the increased risk at both crossings, one weakness of MSLs is that they do not prevent use of the crossing and there have been a number of fatalities at pedestrian and other crossings where MSLs have been installed. Expensive works which may mitigate risk but allow it to remain do not appear to me to be ones which can be described as reasonably practicable given the extensive use

of the crossing by a vulnerable group of users. In contrast, a slightly more circuitous route incorporating the footbridge would eliminate the risk to pedestrians posed by the current crossings.

39. In the circumstances, I do not consider that there are any reasonably practicable measures which could be taken to reduce the risk to the public to an acceptable level and make the crossings safe.

Whether, if the Orders are confirmed, adequate arrangements have been made to secure the redundant crossings

40. As part of the bridge construction works undertaken by Network Rail, the decking between the rails and the kissing gates in the railway boundary fence at both crossings were removed. Access to the railway has been prevented by the installation of 1.6 metre high steel palisade fencing. Adequate arrangements have therefore been made to secure the redundant crossings.

Whether it is expedient to confirm the Orders

41. In considering whether or not it is expedient to divert and extinguish the crossings, I must weigh in the balance all the circumstances. The increase in the number of trains which are projected to run on this railway, together with the extensive use of the crossings by vulnerable people has resulted in the risk to users becoming unacceptable. The provision of a footbridge as a substitute for the crossings will provide the public with a means of crossing the railway which does not expose them to risk and danger.
42. Due to the physical characteristics of the railway line at this point, the projected rise in the number of trains running at the maximum permissible line speed and the nature and extent of the public use of the crossing, there are no reasonably practicable improvements that could be undertaken to make the current routes safe for use by pedestrians. The infrastructure of the crossings has been removed by Network Rail and the boundary fence of the railway has been made secure.
43. Having taken all these matters into account, I consider that it is expedient to confirm the Orders.

Other matters

44. Two of the objections made to the Orders related to the impact the bridge would have upon the objectors' property in terms of being overlooked, in terms of noise from pedestrian traffic and in terms of light pollution. Although these are not matters which I can take into account, I note that in constructing the bridge the complaints made by the objectors have been addressed. The sides of the bridge have been screened to prevent users having a view into neighbouring properties; the lighting columns in the vicinity of the bridge have been shrouded to prevent light spill onto neighbouring properties and the surface of the bridge has been treated to reduce the sound of footsteps.
45. The objectors also questioned the positioning of the footbridge and suggested that it could have been built at Downfield Road where the impact upon neighbouring residential properties would have been much less. I understand that the bridge was built at Beards Lane as there was insufficient land which was wholly within Network Rail's ownership at Downfield Road to build a bridge with appropriate ramps. Furthermore, Network Rail had concerns that if the

bridge had been built at Downfield Road, those wishing to cross the railway to reach Stroud and Marling Schools may have made more use of the nearby Gannicox crossing which is currently used to a much lesser extent than either Beards Lane or Downfield Road.

46. The remaining objection was predominantly based on the premise that the closure of the Downfield Road crossing would lead to an increase in the numbers of children who would travel to school by car instead of walking. Those wishing to travel to school via the new footbridge instead of crossing at Downfield Road are likely to face an additional journey of around 3 minutes; I do not consider that this additional time requirement is likely to lead to many pedestrians changing their mode of travel to school. It is not wholly improbable that the reverse may happen; parents who currently drive their children to school may encourage them to make their own way on foot as the risk and danger posed by crossing an operational railway will have been removed.

Conclusion

47. Having regard to these and all other matters raised in the written representations, I conclude that the Orders should be confirmed.

Formal decision – Order A

48. The Order is confirmed

Formal decision – Order B

49. The Order is confirmed.

Alan Beckett

Inspector